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Reasons for Decision

Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P.

RHW-001-2013

January 2015

Tolls and Tariff

Canada

National Energy Board

Reasons for Decision

In the Matter of

Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P.

Application dated 15 October 2013, pursuant to Part IV of the *National Energy Board Act*, for approval of Tariff Amendments regarding Verification Procedures

RHW-001-2013

January 2015

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Table of Contents

List of Figures i

List of Appendices i

Glossary of Terms, Abbreviations and Units ii

Recital and Appearances iv

1. Disposition 1

2. Introduction and Background 4
- 2.1 Overview of the Application and Hearing 4
- 2.2 Overview of Pipeline Operations 5
- 2.3 Apportionment on the Trans Mountain Pipeline 7

3. Nomination Verification Procedures 9
- 3.1 Trans Mountain's Proposed Tariff Amendments 9
  - 3.1.1 Proposed Tariff Amendments 9
  - 3.1.2 Proposed Officer's Certificate 10
- 3.2 Capacity-Based Nomination Verification Procedures 15
  - 3.2.1 Treatment of the Sumas Delivery Point 15
  - 3.2.2 Commercial Commitments 19
- 3.3 Views of the Board 21

4. Historical-Based Verification Limits 26
- 4.1 Appropriateness of Using Historical Deliveries to Verify Nominations 26
- 4.2 Appropriateness of Using Existing Historical Delivery Data for HBV Limits 30
- 4.3 The Four HBV Limits Issues 32
- 4.4 Minimum Verification Limit 39

List of Figures

Figure 2-1 Map of the Trans Mountain Pipeline System 6

List of Appendices

Appendix I RHW-001-2013 – Detailed Procedural History 42
Appendix II List of Issues 45
Appendix III Trans Mountain's Proposed Tariff Amendments 46
Appendix IV Trans Mountain's Proposed Officer's Certificate 49
Appendix V Board Order AO-001-TOI-002-2013 51

Glossary of Terms, Abbreviations and Units

Application	Trans Mountain's application to the Board for approval of Tariff amendments regarding nomination verification procedures, dated 15 October 2013
Board or NEB	National Energy Board
BP Canada	BP Canada Energy Group ULC
bpd	barrels per day
Brattle Group	The Brattle Group, Inc., which filed evidence on behalf of BP Canada
Chevron	Chevron Canada Limited and Chevron Canada Resources
DCGI	Drazen Consulting Group, Inc., which filed evidence on behalf of Imperial Oil and Suncor
Delivery Point	Kamloops, British Columbia, Sumas, British Columbia, Burnaby, British Columbia and Westridge Marine Terminal, British Columbia, or elsewhere as the Tariff may designate
Dock or Westridge Dock	Trans Mountain's marine crude oil loading facility at its Westridge Marine Terminal in Burnaby, British Columbia
Domestic Destinations	refineries or terminals that receive petroleum transported by Trans Mountain and are connected at Burnaby, British Columbia, and Kamloops, British Columbia
Domestic Shippers	shippers that transport petroleum to Domestic Destinations: Chevron, Imperial Oil, and Suncor
E3	Energy and Environmental Economics, Inc., which filed evidence on behalf of Chevron
Export Destinations	refineries or terminals in Washington State that receive petroleum transported by Trans Mountain via the connected facilities of Trans Mountain Pipeline (Puget Sound) LLC
Export Shippers	shippers that transport petroleum to Export Destinations: BP Canada, Phillips 66, Shell, and Tesoro Canada
HBV Limits	historical-based verification limits
HBV Limits Issues	the four issues identified by Trans Mountain in the Application related to determining the HBV Limits
Imperial Oil	Imperial Oil Limited
Interim Officer's Certificate	the interim Officer's Certificate approved by the Board pursuant to Board Order TOI-002-2013
Land Destinations	all Trans Mountain Pipeline destinations other than the Westridge Dock

Land Shippers	shippers that transport petroleum to Land Destinations by way of the Pipeline
Muse	Muse, Stancil & Co., which filed evidence on behalf of Tesoro Canada
NEB Act	*National Energy Board Act*
Notice of Shipment	the form(s) prescribed by Trans Mountain to be used by a shipper in notifying Trans Mountain of proposed tenders on the Pipeline
Officer's Certificate	officer's certificate in the form set out in Attachment 3 to the Application
PEG	Pacific Economics Group, L.L.C., which filed evidence on behalf of Phillips 66
Phillips 66	Phillips 66 Canada Ltd.
Pipeline	Trans Mountain Pipeline
Puget Sound Pipeline	the facilities of Trans Mountain Pipeline (Puget Sound) LLC
Receipt Point(s)	Edmonton, Alberta, and Kamloops, British Columbia, or elsewhere as the Tariff may designate
Refined Product Shippers	Imperial Oil and Suncor
REG	Regulatory Economics Group, LLC, which filed evidence on behalf of Shell
Shell	Shell Trading Canada/Shell Canada Limited
Suncor	Suncor Energy Products Partnership
Tariff	Trans Mountain Pipeline ULC Petroleum Tariff No. 92 – Rules and Regulations Governing the Transportation of Petroleum, effective 16 July 2013
Tesoro Canada	Tesoro Canada Supply & Distribution Ltd.
Trans Mountain	Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P.

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the Regulations made thereunder; and

IN THE MATTER OF an application dated 15 October 2013 by Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P., pursuant to Part IV of the NEB Act, for approval of tariff amendments incorporating historical-based verification limits and nomination verification procedures, filed with the National Energy Board under File No. OF-Tolls-Group1-T260-2013-06 01; and

IN THE MATTER OF Board Hearing Order RHW-001-2013 dated 11 December 2013;

HEARD by way of written submissions;

BEFORE:

D. Hamilton	Presiding Member
R. R. George	Member
S. Parrish	Member

Chapter 1

Disposition

In its MH-002-2012 Reasons for Decision,[1] the National Energy Board (Board or NEB) directed Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P. (Trans Mountain) to revise its nomination or capacity allocation procedures in Trans Mountain Pipeline ULC Petroleum Tariff No. 92 – Rules and Regulations Governing the Transportation of Petroleum (Tariff) to address apportionment on the Trans Mountain Pipeline (Pipeline). In doing so, Trans Mountain was to give due consideration to the physical limitations of the Puget Sound Pipeline.

Trans Mountain applied to the Board requesting approval of certain Tariff amendments incorporating historical-based verification limits and nomination verification procedures (Application). The Board also considered the appropriateness of alternative procedures proposed by intervenors to address the apportionment on the Pipeline.

In reaching its Decisions, the Board took into consideration the evidence and submissions of all parties to the RHW-001-2013 proceeding. The Board was informed by the confidential information presented over the course of the proceeding, but makes reference only to the evidence on the public record. The ensuing chapters constitute the Board's Reasons for Decision in respect of the Application in the RHW-001-2013 proceeding.

Decisions

The Board has determined that the implementation of historical-based verification limits will be fair and equitable for all shippers on the Pipeline. The Board has decided that a historical-based verification limit is appropriate based on the higher of:

- the highest average deliveries to a shipper, including those redirected from the Westridge Dock, calculated as a percentage of total deliveries to Land Destinations using 18 months out of the 24-month period immediately preceding the nomination date; or
- three per cent of the available capacity.[2]

The Board finds that the intent underlying Trans Mountain's proposed nomination verification procedures and the use of an officer's certificate (Officer's Certificate) is reasonable. A shipper is expected to have, as of the date of its nomination, both the "capability" and "intent" to tender and remove its nominated volumes of petroleum type(s). By having an officer certify the validity of the shipper's monthly nominations, any known circumstances that might impact the shipper's ability to nominate volumes to the Pipeline are accounted for each month.

However, Trans Mountain's Tariff and Officer's Certificate require some modifications. The Board directs Trans Mountain to file a revised Tariff and Officer's Certificate, including the modifications listed below, with the Board, for approval, by 27 February 2015. A black-line

[1] National Energy Board, MH-002-2012, Reasons for Decision, Chevron Canada Limited, July 2013.

[2] Approximately 221,000 barrels per day (bpd) of Pipeline capacity reserved for deliveries to Land Destinations.

version, highlighting all amendments, must accompany each of these filings. All requirements set out in the Tariff should be consistent in terminology and meaning with those set out in the Officer's Certificate.

1. Amend proposed Rule 6.2 of the Tariff to require each shipper to verify that: (i) it has the capability and intent to tender each of its nominated volumes and petroleum types; and (ii) the delivery facility indicated on a shipper's nomination has the capability and intent to remove, or have removed, the nominated volume and petroleum types;
2. Amend the proposed definition of "Affiliate" (Rule 1.4 of the Tariff) to also include third-party shippers that are subject to the control of upstream facility and Land Destination operators;
3. Define the terms "capability" and "intent" in the Tariff in a manner consistent with the following interpretation: capability to tender the petroleum refers to the shipper having the physical capacity to deliver the petroleum to Trans Mountain at the Receipt Point, and capability to remove refers to the shipper having the physical capacity to receive the petroleum from the point of delivery. The shipper must have entered into a contract to purchase the petroleum before making a nomination. Intent means the shipper had in its mind a purpose for the tendering of its nominated volume;
4. Amend the wording of the Officer's Certificate to expressly clarify that a shipper is required to verify the capability and intent to ship each individual petroleum type at the nominated volumes rather than the aggregate volume of all types;
5. Amend the Officer's Certificate to make it explicit that volumes a shipper reasonably believes are available in the market for it to purchase cannot be used to verify the shipper's supply. This amendment should not restrict "crude slate optimization";
6. Amend the Officer's Certificate to reflect that a shipper should account for all of its constraints to the fullest extent possible, including its commercial commitments and what it reasonably expects to provide to another party;
7. Amend the Tariff to require that a shipper have the capability and intent to remove its nominated volumes and petroleum types from the point on the Trans Mountain system at which "Delivery", as defined in the Tariff, to the shipper occurs, rather than from Delivery Points; and
8. Make other "consequential amendments" to the Tariff considered necessary for ensuring clarity and consistency, in a manner and spirit consistent with the views, findings and directions set out in this Reasons for Decision.

Treatment of the Puget Sound Pipeline

The Board finds that, for the purposes of nomination verification and capacity allocation, the Pipeline and the Puget Sound Pipeline form an operationally integrated system. Trans Mountain's current and proposed administration of the Tariff rules as they relate to the Sumas Delivery Point are appropriate.

Based on the data and the historical-based verification limits put forward in this proceeding, the sum of verified nominations for Land Destinations located in Washington State would not be expected to exceed the capacity of the Puget Sound Pipeline. In the Board's view, this would appropriately account for the capacity of the Puget Sound Pipeline in Trans Mountain's nomination procedures. The Board finds that Trans Mountain has satisfied the requirement to give due consideration to the physical limitations of the Puget Sound Pipeline, in accordance with the Board's direction in the MH-002-2012 Reasons for Decision.

Review and Termination Date

The Board has decided against mandating a review of the implementation of the Tariff amendments and providing for a termination date. If unintended impacts arise or if market circumstances materially change, the Board expects Trans Mountain and its shippers to negotiate solutions between themselves. Should the parties fail to reach an agreement, they may bring any concerns forward to the Board for resolution.

Board Interim Order TOI-002-2013

Board Interim Order TOI-002-2013 is amended to remain effective until such time as the Board approves Trans Mountain's revised Tariff and Officer's Certificate (see a copy of Board Order AO-001-TOI-002-2013 attached as Appendix V to this Decision).

D. Hamilton
Presiding Member

R. R. George
Member

S. Parish
Member

Calgary, Alberta
December 2014

Chapter 2

Introduction and Background

2.1 Overview of the Application and Hearing

On 15 October 2013, Trans Mountain applied to the Board for an order, or orders, approving certain revisions to the nomination verification procedures in the Tariff for the Pipeline.

In the MH-002-2012 Reasons for Decision, the Board was of the view that based on the current and forecasted supply and market dynamics, apportionment on the Pipeline could be expected to persist. The Board found that the current nomination and capacity allocation procedures are likely contributing to the ongoing apportionment of the Pipeline. In light of this, the Board directed Trans Mountain to revise its nomination or capacity allocation procedures to address apportionment. In doing so, Trans Mountain was to give due consideration to the physical limitations of the Puget Sound Pipeline.[3]

The Application requested approval of Tariff revisions:

(a) regarding the nomination verification procedures in Rule 6.1; and

(b) to incorporate verification limits under Rule 6 based on the Pipeline's historical deliveries of petroleum to a facility connected to the Pipeline at a Land Destination (HBV Limits), and in this regard determining:

  (i) whether to use a defined number of months immediately prior to the nomination date (Rolling Alternative) or a set period of time (Fixed Alternative) as the relevant historical period in setting the HBV Limits;

  (ii) whether to use the maximum volume delivered to each Land Destination in any month (Peak Alternative) or the average volume delivered to each Land Destination (Average Alternative) during the applicable time period;

  (iii) the applicable time period (Time Period); and

  (iv) whether to include deliveries redirected from the Westridge Dock (Dock Redirections Alternative) or not (No Dock Redirections Alternative) in setting the HBV Limits.

Trans Mountain also proposed that a minimum verification limit be established at three per cent of the Pipeline capacity reserved for deliveries to Land Destinations.

[3] National Energy Board, MH-002-2012, Reasons for Decision, Chevron Canada Limited, July 2013. Trans Mountain was directed to submit its proposed procedures, or an explanation of why the procedures in place were adequate, for Board approval on or before 30 September 2013, after consultation with all shippers on the Pipeline. On 24 September 2013, Trans Mountain filed a letter with the Board requesting a 15-day extension to the deadline. Trans Mountain indicated that it would use the time to pursue a negotiated settlement with its shippers. The Board granted Trans Mountain's request for extension on 26 September 2013, and directed Trans Mountain to file its application by 15 October 2013.

Trans Mountain submitted that such Tariff revisions were intended to address apportionment on the Pipeline, while respecting Trans Mountain's obligations under the NEB Act.

Trans Mountain's proposed revisions to the nomination verification procedures and the incorporation of HBV Limits are considered in Chapters 3 and 4 of this Decision, respectively, along with alternate proposals advanced by the intervenors in this proceeding.

To mitigate the risk of increased apportionment while the Application was subject to review, Trans Mountain also requested an order of the Board directing, on an interim basis, that any shipper unable to provide third party verification from a non-affiliate instead provide an Officer's Certificate in order to satisfy the verification requirements in the Tariff. On 27 November 2013, the Board issued Interim Order TOI-002-2013.[4]

On 11 December 2013, the Board issued Hearing Order RHW-001-2013 setting out the procedural schedule for a written hearing. A detailed procedural history and the List of Issues are set out in Appendices I and II to this Decision.

2.2 Overview of Pipeline Operations

The Pipeline transports a range of crude oils and refined petroleum products from points of receipt (Receipt Points) in Edmonton, Alberta, and Kamloops, British Columbia, to locations in southwestern British Columbia. In particular, the Pipeline transports petroleum to Delivery Points at Kamloops, Burnaby and the Westridge Marine Terminal. The Pipeline also transports crude oil to the Puget Sound Pipeline, which is interconnected with the Pipeline at the international boundary downstream of the Sumas Delivery Point.

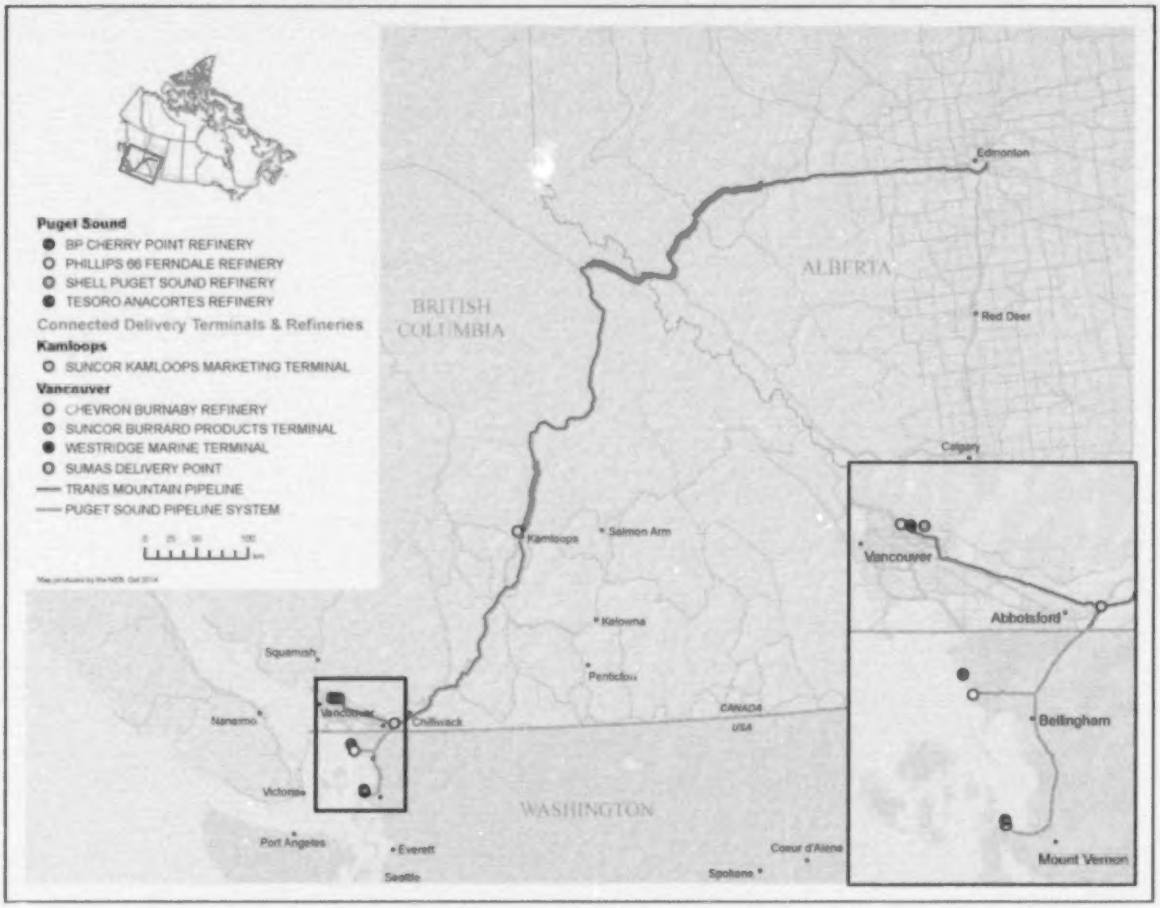
The Pipeline has an operating capacity of approximately 300,000 bpd. Of the total Pipeline capacity, 221,000 bpd is reserved for deliveries to Land Destinations and is allocated according to each shipper's monthly nominations of crude and petroleum products. The remaining Pipeline capacity is allocated to the Westridge Dock, including 54,000 bpd for committed shipments and 25,000 bpd for uncommitted shipments.

The interconnected Puget Sound Pipeline is owned by Trans Mountain Pipeline (Puget Sound) LLC, which is an affiliate of Trans Mountain. The pipeline is regulated by the United States Federal Energy Regulatory Commission, and administers its own tariff.

The Puget Sound Pipeline is comprised of three segments, and the capacity of the Puget Sound Pipeline is based on the respective capacities of the pipeline's segments and the different available operational configurations of the pipeline. The capacity of the Puget Sound Pipeline is approximately 241,000 bpd, assuming that 20 per cent of the crude nominated is heavy crude and deliveries are split 60/40 between the Anacortes and Ferndale refinery destinations, respectively.

[4] The effect of the Order was to implement the requirement for an Officer's Certificate in the form requested by Trans Mountain. This Interim Officer's Certificate was implemented in the Pipeline's verification procedures in December 2013 for January 2014 nominations, and was to remain in effect until the Board released its decision on the Application.

Figure 2-1 Map of the Trans Mountain Pipeline System



Seven primary Land Destination shippers (Land Shippers) use the Pipeline, and each of these shippers provides a monthly nomination to Trans Mountain indicating the volume of petroleum to be transported for the following month.

Three of the Land Shippers transport petroleum to Land Destinations located in Canada. Imperial Oil Limited (Imperial Oil) and Suncor Energy Products Partnership (Suncor) (the Refined Product Shippers) each use the Pipeline to transport refined products from Edmonton to Kamloops, where the refined products are received at the Suncor Kamloops Products Terminal, and from Edmonton to Burnaby, where the refined products are received at the Suncor Burrard Products Terminal. Chevron Canada Limited (Chevron) transports crude petroleum and refined petroleum products from Edmonton to its refinery located in Burnaby. Chevron and the Refined Product Shippers are referred to herein as the Domestic Shippers on the Pipeline.[5]

[5] For the purposes of this Decision, Imperial Oil and Suncor's terminals and Chevron's Burnaby refinery are referred to as the Domestic Destinations.

The four remaining Land Shippers, BP Canada Energy Group ULC (BP Canada), Phillips 66 Canada Ltd. (Phillips 66), Shell Trading Canada/Shell Canada Limited (Shell) and Tesoro Canada Supply & Distribution Ltd. (Tesoro Canada), transport crude from the Edmonton Receipt Point and receive this crude at their downstream refineries located near Anacortes and Ferndale, Washington.[6] Shipments to Export Destinations traverse segments of both the Pipeline and the Puget Sound Pipeline. These shippers are referred to herein as the Export Shippers.

2.3 Apportionment on the Trans Mountain Pipeline

In each month since November 2010, the monthly nominations of Land Shippers have exceeded the capacity of the Pipeline reserved for deliveries to Land Destinations. As a result, the Pipeline has been in consistent and substantial apportionment. Apportionment on shipments originating in Edmonton and being transported to Land Destinations was, on average, 71 per cent between January 2012 and March 2014.

In this proceeding, evidence was presented relating to the potential causes of such apportionment and the impacts on Land Shippers. While this evidence provides important context for considering the matters before the Board in the Application, the Board does not consider it necessary to rule on these issues.

Potential Causes of the Apportionment

Parties to the proceeding were generally of the view that all shippers are contributing to the current apportionment levels, and the two contributing factors to apportionment on the Pipeline are market dynamics and "over-nominations".

Most parties to the proceeding indicated that the price differential described by the Board in the MH-002-2012 Reasons for Decision continues, and that market dynamics remain a primary cause of apportionment on the Pipeline.[7] Imperial Oil and Suncor submitted that apportionment is a natural and inevitable result of market conditions, and it signals the need for more capacity. Until then, the supply and demand imbalance is inevitable.

Several parties, including Trans Mountain, submitted that the current apportionment levels are exacerbated by the inadequate verification of shipper nominations. Trans Mountain stated that the existing Tariff provides it with limited authority to reject a shipper's verification. This, in turn, may have facilitated "over-nominations" of deliveries to Land Destinations by shippers.

Some parties contended that the Tariff's current nomination process encourages shippers to submit nominations in excess of their actual intended usage, as they are aware that they will receive fewer volumes than they have nominated. According to these parties, this favours larger refineries or shippers that have the most flexibility to increase their nominations. Shell submitted that the Tariff, which allocates Pipeline capacity based on the stated needs of shippers, could reasonably result in behaviours of shippers trying to maximize constrained Pipeline capacity by

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[6] For the purposes of this Decision, the refineries of BP Canada, Phillips 66, Shell and Tesoro Canada are referred to as the Export Destinations.

[7] National Energy Board, MH-002-2012, Reasons for Decision, Chevron Canada Limited, July 2013. The Board noted that most parties were of the view that apportionment on the Pipeline will remain even if the mid-continent discount narrows, partly due to the expectations for strong growth in the production of Western Canadian crude oil.

stating need at the highest allowable level. This could be viewed as an overstatement when compared to actual deliveries or use.

Impacts of the Apportionment on Land Shippers

Shippers were generally of the view that the high levels of apportionment on the Pipeline have created uncertainty for shippers. In making nominations in compliance with Rule 6.1 of the existing Tariff, and more specifically in demonstrating the "availability of supply", a shipper is obligated to arrange for the physical delivery of all petroleum types and volumes it nominates, notwithstanding the fact that not all volumes will be shipped due to apportionment.

Some shippers indicated that this has created planning uncertainty, as it results in commercial and financial impacts that must be mitigated each month the Pipeline is in apportionment. It was submitted that the ongoing prospect of high levels of apportionment also implies uncertainty associated with future investments in the capacity of shippers' facilities, which introduces inefficiencies and costs into Western Canadian crude oil delivery systems. Shippers also submitted that the planning uncertainty has had negative effects on relationships with crude oil suppliers upstream of Edmonton.

According to BP Canada, to the extent that chronic apportionment on the Pipeline can be reduced or eliminated through amendments to the Tariff, it will increase commercial certainty for nominating shippers and reduce the financial impacts associated with: turning significant amounts of petroleum back to suppliers; reselling petroleum back after apportionment; or contracting for storage service.

Chapter 3

Nomination Verification Procedures

This chapter considers the key issues related to nomination verification procedures for the Pipeline. They were introduced in this proceeding largely through the submissions of the parties on Trans Mountain's proposed Tariff amendments. Trans Mountain's amendments are considered first, followed by an overview of capacity-based nomination verification procedures.

3.1 Trans Mountain's Proposed Tariff Amendments

Trans Mountain has proposed to revise the nomination verification procedures in the Tariff with proposed amendments to Rules 1.4, 6.1, 6.2 and 6.4, among other changes.[8] This part of Chapter 3 sets out the parties' views regarding the proposed procedures, beginning with a brief overview and followed by a specific consideration of the requirement for an Officer's Certificate.

3.1.1 Proposed Tariff Amendments

Views of Trans Mountain

Trans Mountain submitted that the proposed amendments would clarify the nomination verification procedures and allow Land Shippers to meet the verification requirements of the Tariff through the submittal of an Officer's Certificate. Shippers would be able to satisfy the verification requirements while ensuring that Trans Mountain has the ability to monitor nominations to the Pipeline, with the goal of limiting "over-nominations" and reducing apportionment.

Under Trans Mountain's proposal, a shipper would be expected to have, as of the date of its nomination, both the "capability" and "intent" to tender and remove its nominated volumes of petroleum type(s). This is consistent with Trans Mountain's existing Tariff. The proposed Officer's Certificate included specific wording setting out this requirement.

With respect to interpreting "availability of supply" under the current Tariff, Trans Mountain stated that a shipper is required to certify that it owns the petroleum, has control over the petroleum and has the right to deliver the petroleum to Trans Mountain at the Receipt Point. Trans Mountain did not view petroleum that a shipper is simply able to procure in the market in time to tender it for delivery to the Pipeline in accordance with the nomination as meeting the Tariff requirements.

Views of Export Shippers

The Export Shippers were generally supportive of Trans Mountain's proposed amendments to the Tariff's nomination verification procedures, although they proposed some modifications.

[8] See Appendix III – Trans Mountain's Proposed Tariff Amendments

BP Canada submitted that Rules 6.1 and 6.2 of the proposed Tariff should be amended to include an express requirement that a shipper making a nomination have both the "capability" and "intent" to tender and remove each petroleum type at the nominated volume.

Phillips 66 observed that the Tariff definition for the term "Nomination" lists the information to be specified in a shipper's Notice of Shipment, including the volume of petroleum, the Receipt Point(s), the Delivery Point(s), and the type(s) of petroleum. Phillips 66 submitted that this definition could be revised to include "the Land Destination(s)" among the information to be specified. For consistency, Phillips 66 proposed that Rule 6.1 also be revised to include the words "the Land Destination" as part of the information required for a Notice of Shipment.

In addition, Phillips 66 suggested that Rules 6.2 and 6.5 of Trans Mountain's proposed Tariff be amended to specify that each shipper provide verification of its capability to receive petroleum at a Land Destination, rather than from a Delivery Point.

Views of Domestic Shippers

The Domestic Shippers were of the view that Trans Mountain's proposal does not take into consideration the physical limitations of the Delivery Point at Sumas, British Columbia, where petroleum is delivered off the Pipeline and into the interconnected Puget Sound Pipeline. This ignores an underlying premise of the Board's direction to Trans Mountain in the MH-002-2012 proceeding that the physical capacity of the Puget Sound Pipeline be given due consideration.

The Domestic Shippers asserted that Trans Mountain administers its existing Tariff in an inadequate, or discriminatory, manner. In Chevron's view, the proposed changes do not address the current discrimination on the system, and are an attempt to legitimize Trans Mountain's current interpretation of the Tariff. Chevron was of the view that, rather than seek to revise the Tariff to justify past behaviour, Trans Mountain should revise its behaviour to comply with the Tariff.

Chevron asserted that Trans Mountain: (i) treats Delivery Points differently; and (ii) focuses on physical limitations of particular shippers as opposed to the commercial arrangements a particular shipper has made in practice. This creates gaps between commercial reality and notional nomination capability for all shippers, and results in a Tariff that fails to meet the not unduly discriminatory standard required under the NEB Act.

The Domestic Shippers' alternate proposals are overviewed in detail in section 3.2, which considers capacity-based nomination verification procedures.

3.1.2 Proposed Officer's Certificate

Views of Trans Mountain

Under Trans Mountain's proposal, amended Rule 6.2 would require any shipper that is unable to provide third party verification from a non-Affiliate to provide a certificate from an officer of the company in the form set out in Appendix IV to this Decision.[9]

[9] Trans Mountain proposed that the term "Affiliate" be defined in the Tariff. See Appendix III – Trans Mountain's Proposed Tariff Amendments.

According to Trans Mountain, the use of the proposed term "Affiliate" in amended Rule 6.2 clarifies that, for the purposes of providing nomination verification, an Affiliate would not be considered a third party. Therefore, a shipper whose petroleum is received from, or delivered to, a facility owned or operated by that shipper or its Affiliate would not be able to provide a third party verification. No current Land Shipper can provide third party verification from a non-Affiliate for both upstream supply and downstream deliveries, and thus all Land Shippers would be required to provide the Officer's Certificate.

Trans Mountain argued that the Officer's Certificate would help to consistently ensure that each shipper nominates only those volumes that the shipper has the capability and intent to tender and the capability and intent to remove, or have removed, from the Pipeline. Absent the requirement for an Officer's Certificate, Trans Mountain submitted that it would be possible for Land Shippers to nominate their verification limit each month without due regard to the actual operations of the facilities at Land Destinations. Trans Mountain confirmed that the Officer's Certificate was designed to take into account the commercial and physical capabilities or constraints of shippers to provide petroleum to, or service petroleum from, the Pipeline.

Trans Mountain submitted that the reference to "capability" to tender in the Officer's Certificate refers to the shipper: having the physical capacity to deliver the petroleum to Trans Mountain at the Receipt Point; having purchased or entered into an agreement to purchase the petroleum; expecting to produce the petroleum; or, having the petroleum in inventory. Simply having an ability to procure petroleum in the market in time to tender it for delivery to the Pipeline would not meet the requirement. In Trans Mountain's view, the shipper must have entered into a contract to purchase the petroleum before making a nomination.

Similarly, the reference to "capability" to remove refers to the shipper having the physical capacity to receive the petroleum from the point of delivery. The word "intent" in the Officer's Certificate was meant to reflect what Trans Mountain considered to be the ordinary meaning of the word, namely that the shipper had in its mind a purpose when it signed the Officer's Certificate for the tendering of its nominated volume.

Trans Mountain contended that the form of shippers' third party verifications has varied greatly since November 2012, and the existing Tariff imposes restrictions on Trans Mountain's ability to reject such verifications. In addition, it was Trans Mountain's submission that the use of an Officer's Certificate at all times when the Pipeline is in apportionment, and not just when there is a question regarding a shipper's nomination, would allow Trans Mountain to implement the Officer's Certificate requirement uniformly for all shippers and in a manner that is fair to all shippers.

Trans Mountain observed that the Pipeline did not experience an overall increase in apportionment since the implementation of the Interim Officer's Certificate, but rather apportionment remained relatively level. Despite the fact that Trans Mountain was unable to identify any discernable effects on apportionment, it submitted that it had greater confidence in its ability to validate nominations received under the terms of the Interim Officer's Certificate than prior to its implementation.

Views of BP Canada

BP Canada supported upstream and downstream nomination verification by way of an Officer's Certificate, but contended that Trans Mountain's proposed form demonstrates an inconsistency

with the requirements of the Tariff and a lack of clarity. This may lead to material uncertainty and potentially an unfair advantage as two or more shippers may interpret the Officer's Certificate differently. Accordingly, BP Canada proposed several modifications to address the following issues:

- Trans Mountain's proposed form permits an officer to certify the shipper's supply by way of volumes the shipper reasonably believes are available in the market for it to purchase as of the monthly nomination date. BP Canada referred to Trans Mountain's confirmation that it is not sufficient to procure the nominated petroleum in the market after the monthly nomination date;
- In making a nomination for any single petroleum type, the shipper must have the capability and intent to tender that individual petroleum type at the nominated volume. Trans Mountain's proposed form requires certification of an aggregate volume of all types of petroleum nominated, rather than certification of each type of petroleum nominated; and
- Trans Mountain's proposed form contains the following terms, which are capitalized but are not defined in either the Officer's Certificate or the Tariff: "Nomination Month" and "Nominated Volume".

Regarding the interpretation of the term "capability," BP Canada submitted that it means that a shipper has a bona fide agreement to purchase the nominated petroleum and/or has a bona fide reasonable expectation to produce the nominated petroleum.

Contrary to the assertions of other intervenors, BP Canada was of the view that historical-based verification limits do not obviate the need for an Officer's Certificate. According to the Brattle Group, which filed evidence on behalf of BP Canada, the Officer's Certificate serves as a deterrent to inappropriate nomination behaviour on the part of shippers.

BP Canada observed that all shippers had been using the Interim Officer's Certificate since January 2014, and asserted that no harm or inconvenience arose from its use.

Views of Chevron

Chevron supported the use of an Officer's Certificate if the Board were to direct Trans Mountain to adopt Chevron's proposal for capacity-based verification of nominations (see section 3.2). However, Chevron stated that an Officer's Certificate would not be required under its alternate recommendation regarding historical-based verification limits (see Chapter 4). Chevron submitted that corrected historical deliveries would be used as a proxy for the volumes that each shipper can use, and that in months where a shipper was unable to use its assigned capacity, it could either turn back the excess to Trans Mountain or resell it in the secondary market.

Chevron proposed modifications to the Officer's Certificate to reflect the commercial commitments of shippers. Chevron contended that the information on the record confirms that the volume of refined products available for shipment on the Pipeline is constrained by commercial commitments, defined as the total refinery output from the Imperial Oil and Suncor refineries on the Prairies, net of the volumes destined for the Prairies. Chevron submitted that there is currently no effort to limit what Imperial Oil and Suncor can nominate based on the projected Prairie surplus of refined product.

Under Chevron's proposed modifications, Trans Mountain would require each Refined Product Shipper to identify the projected refined product available to them in the next month and the projected Prairie demand for the month. Trans Mountain would then accept nominations for that month up to the difference between the projected Prairie supply and projected Prairie demand.

To incorporate its proposal, Chevron recommended that clause 4.b. of the Officer's Certificate be amended as follows:

> b. less any volumes of each Petroleum type that
>
> i. have been nominated for delivery to an alternate pipeline/facility in the same Nomination Month
>
> ii. have been sold, or committed or which Shipper otherwise intends and reasonably expects to provide to another party in the same Nomination Month
>
> iii. have been sold or committed or which Shipper otherwise intends to employ and reasonably expects to serve a market not served by Delivery from the Trans Mountain Mainline System.

Views of Imperial Oil and Suncor

Imperial Oil and Suncor submitted that the use of an Officer's Certificate is compatible with capacity-based verification (Imperial Oil and Suncor's recommendation to address the apportionment issues on the Pipeline – see section 3.2). Accordingly, Imperial Oil and Suncor confirmed that they support the use of the Officer's Certificate to verify that: (i) a shipper has the intent to tender its nominated volumes and petroleum type(s); and (ii) as of the monthly nomination date, a shipper has supply available to it sufficient to satisfy its nomination volumes and petroleum type(s) for tender at the indicated Receipt Points.

However, Imperial Oil and Suncor had concerns with the proposed use of the Officer's Certificate to verify the capability to remove. They asserted that, whereas amended Rule 6.2 requires shippers to verify the capability to remove supply from a *Delivery Point(s)*, Trans Mountain only requires an officer to certify that the *delivery facility* to which the shipper nomination is made has the capability and intent to remove the nominated volume. According to Imperial Oil and Suncor, the capability to remove petroleum from a Delivery Point does not just depend on whether a particular delivery facility has the physical capacity to remove the volume nominated by an individual shipper. It also depends on whether:

- the connecting pipeline facilities from the Delivery Point to the downstream delivery facilities have the capacity to transport the total volumes nominated to the downstream delivery facilities; and
- each delivery facility has the capacity to remove the total volumes nominated to it.

Views of Phillips 66

Phillips 66 indicated that while it views the Officer's Certificate as unnecessary, it is not opposed to it being continued.

Pacific Economics Group, L.L.C. (PEG), which filed evidence on behalf of Phillips 66, suggested that verification by way of an Officer's Certificate would be obviated with an effective

history-based capacity allocation process that reflects recent average system usage. PEG submitted that Officer's Certificate verification is not necessary if the capacity allocation process is transparent, fair, and does not encourage "gaming."

Phillips 66 proposed the following two amendments related to the Officer's Certificate in the event the Board determined that the requirement for the Officer's Certificate should continue:

- Trans Mountain's proposal defined "Affiliates" as upstream facility and Land Destination operators that are subject to the control of shippers. The definition of "Affiliate" in Trans Mountain's proposed Rule 1.4(d) of the Tariff should be broadened to also include third party shippers that are subject to the control of upstream facility and Land Destination operators.
- Clause 4 of the Officer's Certificate is unnecessary for crude oil nomination because the adequacy of crude oil supply at Edmonton is beyond question. However, clause 4 should continue to be required for refined product nominations because Prairie demand is given priority over the demand in British Columbia.

Views of Shell

Shell supported the use of the Officer's Certificate in conjunction with a historical-use methodology for the calculation of verification limits. According to Shell, an Officer's Certificate used concurrently with historical-based verification limits provides for a fair and uniform method to allocate constrained capacity amongst all shippers.

Views of Tesoro Canada

Tesoro Canada submitted that the Officer's Certificate would be generally unnecessary if a verification methodology based on a historical record of deliveries were accepted. It argued that if an apportionment ceiling were adopted based on historic deliveries to each Land Destination, each Land Destination would likely be capable of securing and delivering that historical allocation in the future. It was Tesoro Canada's view that the use of the Officer's Certificate could be terminated or reserved for circumstances where Trans Mountain had reason to believe there is a legitimate question as to whether a shipper was able to deliver or receive nominated volumes.

Tesoro Canada raised concerns with respect to BP Canada's proposed amendments to the Officer's Certificate and, in particular, how BP Canada's proposal would treat market purchases. Tesoro Canada indicated that it secures the supply necessary to underpin its nominations prior to the nomination deadline, and revises its slate once it receives its apportionment allocation. While BP Canada's proposed changes target market purchases after nominations for the purpose of filling nominated volumes, Tesoro Canada was opposed to any suggestion that crude slate optimization based on market purchases after apportionment should be restricted.

3.2 Capacity-Based Nomination Verification Procedures

3.2.1 Treatment of the Sumas Delivery Point

Views of Domestic Shippers

The Domestic Shippers submitted that the Tariff, as historically administered, has required shippers to verify their capability to remove petroleum from the Kamloops, Burnaby and Westridge Marine Terminal Delivery Points, but it has not required shippers to verify their capability to remove petroleum from the Sumas Delivery Point. Rather, Trans Mountain has only required a shipper to verify its capability to remove petroleum at an Export Destination downstream of the Sumas Delivery Point, without proving they have the means to move petroleum to that destination.

Chevron asserted that this administration of the Tariff is unprincipled and discriminatory, in addition to being contrary to the wording of the Tariff. This has led directly to the reallocation of capacity from shippers nominating for delivery at Burnaby or Kamloops to shippers nominating for delivery at Sumas. According to Chevron, Trans Mountain's proposed Tariff amendments do not rectify this and ignore an underlying premise of the Board's direction to Trans Mountain in the MH-002-2012 proceeding (i.e., to give due consideration to the physical capacity of the Puget Sound Pipeline).

The Domestic Shippers contended that the capability to remove from the Sumas Delivery Point does not just depend on whether an Export Destination has the capability to remove the volume nominated by an Export Shipper. It also depends on whether the Puget Sound Pipeline has the capacity to transport the aggregate volumes nominated by shippers from the Sumas Delivery Point to the downstream Export Destinations. The Domestic Shippers suggested that if Export Shippers are permitted to make nominations exceeding the total volumes that can be received from the Puget Sound Pipeline, the result will be significant unfairness to Domestic Shippers.

The Domestic Shippers argued that the aggregate nominations to the Export Destinations should be limited to the physical capacity of the Puget Sound Pipeline, which represents the limitation of shippers to remove volumes from the Sumas Delivery Point. The capability of the shipper to remove its nominated volume from the Sumas Delivery Point would then be verified through confirmation that the shipper has been allocated sufficient capacity to transport such volume on the Puget Sound Pipeline. The Domestic Shippers observed that there can be significant variations in the capacity of the Puget Sound Pipeline, having regard for its different segments and operational configurations. They asserted that Trans Mountain should be required to verify this capacity each month in an open and transparent manner.

Drazen Consulting Group, Inc. (DCGI), which filed evidence on behalf of Imperial Oil and Suncor, contended that Trans Mountain ignores that Sumas is a Delivery Point and treats the Trans Mountain Pipeline and the Puget Sound Pipeline as a single pipeline. Chevron argued that the Puget Sound Pipeline is not a continuation of the Trans Mountain mainline because Trans Mountain's mainline continues to Burnaby and can operate whether the Puget Sound Pipeline is in operation or not.

Energy and Environmental Economics, Inc. (E3), which filed evidence on behalf of Chevron, contended that a physical interconnection between two pipelines does not make them an

integrated system even if the downstream pipeline is an affiliate, is dependent on the upstream pipeline for supply, and has a degree of operating coordination that is required to facilitate deliveries between the pipelines.

In the case of nominations to the Domestic Destinations, the aggregate nominations verified by Trans Mountain to each facility would be limited to the physical capacity of the facility. The Domestic Shippers argued that while the limitations between Export and Domestic Shippers are different (the delivery facility capacity being the limitation for Domestic Shippers and the Puget Sound Pipeline capacity being the limitation for the Export Shippers), there is no differential treatment of the Land Destinations in verifying nominations. In all cases, the aggregate volumes verified by Trans Mountain would be limited to the lesser of the capacity of the connecting pipeline or the capacity of the delivery facility to remove volumes from the Pipeline.

According to the Domestic Shippers, the purpose of limiting aggregate Export Destination nominations to the capacity of the Puget Sound Pipeline is not to address the current apportionment on the Trans Mountain Pipeline. Rather, the purpose is to ensure that the nominations are valid. However, Imperial Oil and Suncor stated that there would be a reduction in nominations at the verification stage, and in turn in the level of apportionment on the Trans Mountain system.

Chevron and DCGI both expressed that this treatment of the Sumas Delivery Point would obviate the need for existing Tariff Rule 14.5(b), thereby simplifying Trans Mountain's apportionment procedure.

Views of Trans Mountain

Trans Mountain did not support the proposals of the Domestic Shippers to limit the aggregate nominations of Export Shippers to the capacity of the Puget Sound Pipeline. It was Trans Mountain's submission that these proposals would result in the differential treatment of: (i) Export Shippers versus other Land Shippers; and (ii) volumes transported along the Sumas to Burnaby segment of the Pipeline versus the Sumas to International Boundary segment. Trans Mountain submitted that there is no justification in the circumstances for this differential treatment.

Trans Mountain observed that the MH-002-2012 Reasons for Decision directed Trans Mountain to revise its nomination or capacity allocation procedures to address the current apportionment on the Pipeline. According to Trans Mountain, the capacity-based verification proposals of the Domestic Shippers would not address apportionment. Rather, they would shift the burden of apportionment to particular shippers, without reducing overall apportionment on the Pipeline. In addition, they would result in the underutilization of the Trans Mountain Pipeline and the Puget Sound Pipeline.

Trans Mountain provided a simplified example to illustrate how the capacity-based verification proposals would shift a higher level of apportionment to Export Shippers and result in underutilization of the system. In this example, one verified nomination of 100,000 bpd was submitted for each of the seven refineries/terminals connected to the Land Destinations. Therefore, the aggregate of the four Export Destination nominations would be 400,000 bpd.

Since the aggregate nominations to the Export Destinations would exceed the stated 241,000 bpd capacity of the Puget Sound Pipeline, and because the capacity-based verification proposals

would see the aggregate nominations of the Export Shippers limited to the capacity of the Puget Sound Pipeline, each of the four Export Destination nominations would be reduced pro rata to 60,250 bpd. Following this procedure, total nominations to Trans Mountain would be 541,000 bpd. These 541,000 bpd would exceed the 221,000 bpd capacity available to Land Destinations on the Pipeline and, consequently, each of the seven Land Destination nominations would then need to be reduced pro rata. As a result:

- each of the four Export Destination nominations would be reduced to 24,612 bpd (approximately a 75 per cent reduction from the original volume nominated);
- the Domestic Destination nominations would be reduced to 40,850 bpd (approximately a 60 per cent reduction from the original volume nominated); and
- the total of the verified volumes accepted for delivery to the four Export Destinations would be 98,440 bpd, meaning that the Puget Sound Pipeline capacity would be approximately 40 per cent utilized.

In this example, Trans Mountain observed that the Pipeline would still be in apportionment and Export Shippers would bear a greater proportion of the impacts of that apportionment compared to other Land Destination shippers.

Trans Mountain disagreed with the Domestic Shippers' assertion that while shipper nominations to all Delivery Points other than Sumas are limited to the capacity of the facilities interconnected to those Delivery Points, nominations to the Sumas Delivery Point are not. Trans Mountain argued that the Puget Sound Pipeline is not a facility interconnected to the Sumas Delivery Point, and is therefore differently situated than facilities interconnected to other Delivery Points. Trans Mountain submitted that it treats the Puget Sound Pipeline as an operationally integrated segment of the Trans Mountain system.

According to Trans Mountain, Sumas is different from all other named "Delivery Points" in its Tariff because Trans Mountain is not able to deliver petroleum to shippers at Sumas, which is reflective of the integrated operation of the Trans Mountain and Puget Sound Pipelines. Trans Mountain observed that "Delivery" is defined in section 1.23 of the existing Tariff to mean "delivered by Carrier to the Shipper at the Delivery Point." In this regard, the Sumas Delivery Point is distinct from the other Delivery Points that are included in the definition of "Delivery Point" in the Tariff.

Trans Mountain explained that custody is only transferred to shippers upon delivery to the shipper's connected facilities. In order for Trans Mountain to consider the ability of shippers to remove volumes from the Pipeline in the same way, Trans Mountain looks to the location at which custody of petroleum is transferred to shippers, and where shippers can remove volumes from the Pipeline. Trans Mountain argued that it cannot consider the ability of shippers to remove volumes from the Pipeline at Sumas in the same way it considers the ability at other Delivery Points.

Trans Mountain submitted that, despite suggestions that it did not properly account for the Board's direction in the MH-002-2012 proceeding, it has given due consideration to the physical limitations of the Puget Sound Pipeline. Trans Mountain explained that the order in which capacity is allocated on the Pipeline is prescribed in Rule 14.5 of the Tariff. Under Rule 14.5(a), Trans Mountain's mainline capacity is first allocated among all nominations to Land Destinations. Second, an allocation under Rule 14.5(b), should it be necessary, is made based on

the capacity of the Puget Sound Pipeline. According to Trans Mountain, the allocation order prescribed in Rule 14.5 is based on the overall design of the Pipeline, including the pipeline segment running to the international border downstream of the Sumas station. Trans Mountain stated that, given the point of constraint on the Pipeline is between Edmonton and Sumas and not downstream of Sumas, it has not been necessary to implement the further allocation procedure as described in Rule 14.5(b) of the Tariff.

Furthermore, Trans Mountain proposed an amendment to its verification procedures that is based on a destination's capability to receive volumes as demonstrated by historical deliveries. Trans Mountain contended that using the historic deliveries to each of the Land Destinations served by the Puget Sound Pipeline would demonstrate its capability to remove volume. Based on the data filed in the proceeding, Trans Mountain indicated that, regardless of the structure of the historical-based verification limit proposed by Phillips 66, Shell or Tesoro Canada, the sum of verified nominations for the Export Destinations would not exceed the capacity of the Puget Sound Pipeline, thereby inherently taking into account the capacity of the Puget Sound Pipeline in the determination of the verification limits.

Views of Export Shippers

The Export Shippers submitted that the Sumas Delivery Point is an oddity in the Tariff, and has never been a part of the actual operation of the Pipeline. These parties argued that the Sumas Delivery Point is a notional Delivery Point at the international boundary and serves only to demarcate the transfer of crude oil from Canada to the United States without a change in transportation operations. There is continuous flow from the Pipeline into the Puget Sound Pipeline, and there are no custody transfer meters at or near Sumas, nor can barrels be delivered out of the Pipeline to shippers at Sumas.

Furthermore, the Export Shippers explained that they each submit a single nomination to Trans Mountain. The single nomination is then used for scheduling purposes on both the Pipeline and the Puget Sound Pipeline, without any contact with Trans Mountain Pipeline (Puget Sound) LLC.

While the Export Shippers acknowledged that Trans Mountain Pipeline (Puget Sound) LLC is a separate pipeline company, they contended that Trans Mountain and Trans Mountain Pipeline (Puget Sound) LLC are affiliates, and that Trans Mountain operates its mainline and the Puget Sound Pipeline as an integrated system.

The Export Shippers argued that there is no intermediate operation at the Sumas Delivery Point, and that Trans Mountain operates the entire pipeline system from Edmonton to the refineries in Puget Sound as a single operating system. These parties submitted that there is nothing discriminatory about this process when contrasted with Trans Mountain's delivery to Chevron's Burnaby refinery.

Muse, Stancil & Co. (Muse), which filed evidence on behalf of Tesoro Canada, asserted that the status quo interpretation of the Tariff's nomination verification requirements is reasonable and equitable because it treats all shippers on the Pipeline equally to the maximum extent possible. Muse submitted that the current form of Rule 14.5 of the Tariff treats Land Shippers, irrespective of their ultimate destination, as equally as possible for as long as possible. It was Muse's view that the verification methodology is identical with the same degree of criticality for all shippers. At the first stage of the apportionment procedure, the Edmonton apportionment percentage is

identical for all Land Shippers. Only at the third stage are the Land Shippers treated differently, and this is entirely attributable to the physical constraints imposed by the Puget Sound Pipeline. Accordingly, Muse recommended that the existing Rule 14.5 of the Tariff be retained.

In discussing the capacity-based verification proposals of the Domestic Shippers, the Export Shippers generally agreed with Trans Mountain's view that these proposals would not result in any significant or material reduction in apportionment on the Pipeline, thus failing to meet the Board's direction in the MH-002-2012 Reasons for Decision. The Export Shippers asserted that the capacity-based verification methods proposed by the Domestic Shippers would unjustly discriminate against, and inequitably shift the apportionment burden to, the Export Shippers.

The Export Shippers were of the view that whereas the capacity-based verification proposals of the Domestic Shippers would apportion Canadian destinations once, they would apportion American destinations twice: first on the basis of the Puget Sound Pipeline and then on the basis of the Trans Mountain Pipeline. According to Tesoro Canada, shippers nominating to Canadian destinations would therefore enjoy preferential access for the part of the route that is common and within Canada.

Tesoro Canada argued that the impact of the Chevron proposal would be to limit international crude oil exports in an environment where Canadian crude from the Pipeline is Tesoro Canada's most economically advantaged crude. This would increase the Washington State refiners' average feedstock costs in a refined petroleum products market where Canadian and Washington refiners compete with each other. Tesoro Canada submitted that the capacity-based verification proposals would give the associated Canadian refineries substantially greater access to discounted feedstock, thereby granting an advantage to the Canadian refineries relative to Tesoro Canada. These outcomes would raise legal concerns with legislation that requires the Board to only approve tariffs that: (i) implement just and reasonable tolls; and, (ii) give effect to the North American Free Trade Agreement.

Views of UNIFOR

UNIFOR submitted that Trans Mountain calculates removal capacity at the U.S. refiners' respective refineries and related facilities, which, in UNIFOR's view, ignores the capacity limits of the Puget Sound Pipeline through which these nominated volumes must be delivered. UNIFOR observed that the Delivery Point, as defined by the Tariff, is Sumas and not the particular destinations of the U.S. refineries.

3.2.2 Commercial Commitments

Views of Chevron

Chevron submitted that the principle of fairness requires limiting each shipper's nominations to its capacity to nominate to the Pipeline. According to Chevron, that limitation can take the form of a physical constraint or a commercial constraint, whichever is lower. This should be applied without favour to all limitations on each shipper's ability to use capacity on the Pipeline, whether that limitation is manifest at the Delivery Point or the Receipt Point.

According to Chevron, the use of commercial commitment addresses the volumes that a shipper intends to move and use via the Pipeline, as opposed to the higher volumes that a shipper could

theoretically use, but would not actually utilize in light of its other commercial commitments and considering its actual physical constraints on the Pipeline. E3 asserted that without this reflection of commercial ability to ship product, the nomination volumes could be artificially inflated with excess volumes the shipper knows would never flow on the Pipeline.

Chevron submitted that the volume of refined products available for shipment on the Pipeline is constrained by commercial commitments, defined as the total refinery output from the Imperial Oil and Suncor refineries on the Prairies, net of the volumes destined for the Prairies. Since Imperial Oil and Suncor stated they have no intention of using space for anything other than refined product, Chevron argued that Imperial Oil and Suncor's nominations should be limited to the excess volumes of Prairie refined product they can deliver to the Receipt Point.

Chevron's proposed amendments to the Officer's Certificate to implement a verification limit based on commercial constraints are discussed in section 3.1.2 of this Decision.

Views of Export Shippers

Tesoro Canada and BP Canada expressly disagreed with Chevron's proposal to recognize limitations of interconnected pipelines and commercial commitments. BP Canada submitted that using a mix of physical delivery capacity and commercial commitments to determine verification limits for shippers on the Trans Mountain system is unjustly discriminatory, as it subjectively applies two different quantitative methods to determine verification limits for individual shippers.

Regulatory Economics Group, LLC (REG), which filed evidence on behalf of Shell, submitted that while the concept of imposing a constraint based on commercial commitments appears plausible in theory, the implementation would almost certainly create problems whose magnitude would outweigh any potential benefit.

Views of Imperial Oil and Suncor

Imperial Oil and Suncor contended that the proposal by Chevron to use the commercial commitments of the Refined Product Shippers in verifying nominations is discriminatory, superficial and impractical, and unnecessary. They argued that the commercial commitments proposal is discriminatory because it would only apply to the Refined Product Shippers.

According to Imperial Oil and Suncor, nobody can or does forecast the Prairies excess production on a go-forward monthly basis. This would depend on a host of factors, including storage utilization, refinery turnarounds, refinery upgrades, and supply and demand changes, which no one party is able to forecast. Monthly business plans form the basis for Imperial Oil and Suncor's individual officer's certifications that they have the capability and intent to tender their nominated volumes provided that such nominations are accepted by Trans Mountain. Imperial Oil and Suncor explained that they do not share their monthly business plans with one another. Therefore, neither would be in a position to forecast what monthly refined product volumes would be held for the Prairies by the other.

3.3 Views of the Board

The Board was guided by the principles of fairness and equity among users of the Pipeline in making its decision on the Application. In carrying out its mandate under the NEB Act, the Board establishes tariffs which provide non-discriminatory access to transportation. The Board is of the view that the Tariff, and its administration, should not confer an unfair advantage or disadvantage to any single shipper or group of shippers on the Pipeline.

Several parties to the proceeding presented evidence that apportionment on the Pipeline was caused, at least in part, by the "over-nominations" of shippers. The parties generally agreed that a reasonable nomination verification process should reduce the likelihood of "over-nominations". One of the Board's objectives in making its determination on the Application was to reduce any incentives for a shipper to nominate volumes that it did not have the intent to ship and that were made for the purpose of "gaming" the nomination process. The Board considered it important that the Tariff's nomination verification process be reflective of each shipper's capability and intent to tender and remove its nominated volumes and petroleum types, to the extent practicable.

The Board has sought to apply these principles and objectives by Tariff amendments that are transparent, stable, and simple to implement, understand and enforce.

Trans Mountain's Proposed Tariff Amendments

The Board finds Trans Mountain's proposed Tariff amendments with respect to the nomination verification procedures to be reasonable in terms of their intent. The Board notes that the Land Shippers were generally supportive. However, the Board is of the view that some modifications to Trans Mountain's proposed wording are required to mitigate the risk of varying interpretations being made by one or more of the shippers, potentially leading to material advantages or disadvantages in acquiring Pipeline capacity.

In this proceeding, Trans Mountain indicated that when shippers complete and submit their nomination in accordance with the existing Tariff, each shipper is expected to have the "capability" and "intent" to tender and remove its nominated volumes. The Board is of the view that these are reasonable expectations, but this requirement is not sufficiently clear in the existing Rule 6.1 or in Trans Mountain's proposed Rule 6.2. For this reason, Trans Mountain is directed to amend its proposed Rule 6.2 to require each shipper to verify that: (i) it has the capability and intent to tender each of its nominated volumes and petroleum types; and (ii) the delivery facility indicated on a shipper's nomination has the capability and intent to remove, or have removed, the nominated volume and petroleum types. In the interest of clarity and consistency in the interpretation of the Tariff, such requirements should be consistent in terminology and meaning with those set out in the Officer's Certificate.

Officer's Certificate

Most parties to the proceeding indicated that they were supportive of, or not opposed to, verification by way of an Officer's Certificate. Those parties that raised concerns contended that an Officer's Certificate would be ineffective in reducing apportionment, or unnecessary insofar as historical deliveries are used in establishing verification limits.

The Board is of the view that an Officer's Certificate on its own is not a robust or sufficient solution to Trans Mountain's apportionment issues. However, an Officer's Certificate can play a meaningful role in addressing Trans Mountain's apportionment issues when used in conjunction with other nomination verification procedures and verification limits. By having an officer certify the validity of the shipper's monthly nominations, any known circumstances that might impact the shipper's ability to nominate volumes to the Pipeline are accounted for each month.

The Board notes that the Officer's Certificate has given Trans Mountain greater confidence in its ability to verify its shippers' nominations, and the Board does not perceive the requirement for an Officer's Certificate to be onerous or inconvenient for Trans Mountain's shippers. For these reasons, the Board finds the use of the Officer's Certificate to be reasonable.

The Board is of the view that Trans Mountain's proposed Rule 1.4 is necessary to add clarity in the application of the requirement for Officer's Certification. The Board agrees with the amendment proposed by Phillips 66 regarding the definition of Affiliate. This amendment increases the specificity of the Tariff and constrains the ability of shippers to nominate in a manner inconsistent with the spirit of the Pipeline's nomination verification procedures. Trans Mountain is directed to incorporate the wording proposed by Phillips 66 into the proposed Rule 1.4 of the Tariff.

Based on the evidence on the record, the Board finds Trans Mountain's interpretations of "capability" and "intent" to be reasonable. In the interest of improving clarity in the nomination verification procedures, Trans Mountain is directed to define these terms in the Tariff in a manner consistent with these interpretations. The Board expects Trans Mountain to administer Rule 6.2 of the Tariff and the Officer's Certificate in accordance with the definitions for "capability" and "intent". The Board also expects shippers to comply with these definitions as they relate to both the Tariff and the Officer's Certificate.

The Board is of the view that requiring a shipper to verify the capability and intent to ship each individual petroleum type at the nominated volumes rather than the aggregate volume of all types is more representative of each shipper's abilities and intentions to transport petroleum on the Pipeline. Therefore, the Board directs Trans Mountain to amend the wording of the Officer's Certificate to expressly clarify this.

Trans Mountain confirmed that in order to meet the requirement of "capability," a shipper must have entered into a contract to purchase petroleum before making a nomination. The Board agrees that having an ability to procure petroleum in the market in time to tender it for delivery to the Pipeline would not meet the requirement. However, the Board is of the view that the wording in clause 4.a.ii. of Trans Mountain's proposed Officer's Certificate does not sufficiently reflect this constraint. The Board therefore directs Trans Mountain to make it explicit in the Officer's Certificate that volumes a shipper reasonably believes are available in the market for it to purchase cannot be used to verify the shipper's supply.

The Board is of the view that this amendment should not restrict "crude slate optimization". As such optimization involves the purchase of petroleum after the nomination process, these purchases are not made for the purpose of satisfying nominated volumes in the Officer's Certificate. However, shippers must have the intent to ship at the time of verifying nominations, and crude slate optimization should not be used as a means for "over-nominating" certain petroleum types.

The Board rejects Phillips 66's suggestion that clause 4 of the proposed Officer's Certificate be required only for refined product nominations. Fairness and equity in verification procedures dictates that all shippers should be subject to the same requirements.

The Board accepts Chevron's position that commercial commitments and constraints should be reflected in the nomination verification process, and in particular in the verification of a shipper's capability and intent to tender the nominated volumes and petroleum types. In the Board's view, these constraints are appropriately accounted for in Chevron's proposed amendments to clause 4.b. of the Officer's Certificate. In the Board's view, this wording provides a constraint that can be applied equitably across all shippers. Trans Mountain is directed to incorporate this wording, or wording to this effect, into the Officer's Certificate.

Treatment of the Puget Sound Pipeline

The Board is of the view that the Sumas Delivery Point is demonstrably distinct from other Delivery Points on the Pipeline in that "Delivery", as defined in the Tariff, cannot take place at Sumas. Custody of petroleum can only be transferred to an Export Shipper at the shipper's facilities, which are connected to the Puget Sound Pipeline downstream of the Sumas Delivery Point. The Board agrees with the Export Shippers that Sumas represents a "notional" Delivery Point which demarcates the transfer of crude oil across pipelines and international boundaries, without affecting transportation operations.

The Board is of the view that, in this case, consideration of the nomination and apportionment procedures cannot reasonably occur without accounting for the manner in which the Trans Mountain and Puget Sound Pipelines are operated. The evidence suggests that coordination is required to facilitate deliveries between the pipelines. Therefore, the operations of the pipelines are linked. The Puget Sound Pipeline is reliant on the Trans Mountain Pipeline for supply, and scheduling on the pipelines is completed as a single process. The Board finds that, for the purposes of nomination verification and capacity allocation, the Pipeline and the Puget Sound Pipeline form an operationally integrated system.

The Board is of the view that limiting the aggregate nominations of the Export Shippers to the capacity of the Puget Sound Pipeline, as proposed by the Domestic Shippers, would result in unjust discrimination in transportation service against the Export Shippers. In addition, it would result in the differential treatment of the volumes transported along the Sumas to Burnaby segment of the Trans Mountain system versus the Sumas to International Boundary segment. The Board finds Trans Mountain's current and proposed administration of the Tariff rules regarding the verification of Export Shippers' capabilities to remove petroleum from the Sumas Delivery Point to be appropriate. The Board is of the view that shippers must verify their capability to remove petroleum from the system, which is, for the purposes of nomination verification and capacity allocation, comprised of both the Trans Mountain Pipeline and the Puget Sound Pipeline. Therefore, each Export Shipper is required to verify its capability to remove its nominated volumes from the Puget Sound Pipeline component of the system. Each Domestic Shipper is required to verify its capability to remove its nominated volumes from the Trans Mountain Pipeline component of the system.

To ensure that the Tariff rules clearly reflect this interpretation, the Board directs Trans Mountain to modify its Tariff to require that a shipper have the capability and intent to remove its nominated volumes and petroleum types from the point on the Trans Mountain system at

which "Delivery", as defined in the Tariff, to the shipper occurs, rather than from Delivery Points.

The Board is of the view that Trans Mountain has appropriately considered the physical limitations of the Puget Sound Pipeline in accordance with the Board's direction in the MH-002-2012 Reasons for Decision. The Board notes that, based on the data and the historical-based verification limits put forward in this proceeding, the sum of verified nominations for the Export Destinations would not be expected to exceed the capacity of the Puget Sound Pipeline. In the Board's view, this would appropriately account for the capacity of the Puget Sound Pipeline in Trans Mountain's nomination procedures. In the event the sum of verified nominations for the Export Destinations exceeds the capacity of the Puget Sound Pipeline, the Board is of the view that these circumstances can be reasonably addressed through the apportionment procedures set out in Rule 14 of the Tariff.

Commercial Commitments

The Board is persuaded by Chevron's submission that the limitation on a shipper's capacity to nominate on the Trans Mountain system should take the form of a physical constraint or a commercial constraint, whichever is lower. In the Board's view, such constraints support a verification process which more accurately reflects each shipper's limitations in transporting petroleum on the Pipeline. Commercial constraints may help to prevent the nomination of volumes for which a shipper does not have the intent to ship and, in doing so, may partially address apportionment on the Pipeline.

The Board is of the view that a shipper's nominations should not be verified at a level exceeding the shipper's physical or commercial capabilities. In completing and submitting its nomination, a shipper should account for all of its constraints to the fullest extent possible, including its commercial commitments and what it reasonably expects to provide to another party.

Chevron submitted that commercial commitments represent a constraint only for Refined Product Shippers. The Board accepts that this is but one example of a commercial constraint and for this reason does not consider the proposal itself to be discriminatory. It expects that Trans Mountain will administer this aspect of the nomination verification procedure equally for all shippers.

The Board notes, however, the submissions of the Refined Product Shippers, which suggest that it may not be practical or possible for these shippers to account for commercial commitments or expectations in the manner described by Chevron. To the extent that the commercial commitments of shippers, including the Refined Product Shippers, cannot be captured in the nomination verification process, the Board is of the view that verification limits based on historical deliveries could appropriately reflect these constraints. While these limits would not be perfectly accurate reflections of current constraints, the Board is of the view that they would serve as a reasonable proxy.

Consequential Amendments and Directions to file a Revised Tariff and Officer's Certificate

The Board acknowledges that in addition to the amendments specified in the directions above, other "consequential amendments" to various Tariff provisions may be required for the purposes of ensuring clarity and consistency. This includes, but may not be limited to, defining in the Tariff any terms that are undefined in the Officer's Certificate. To the extent that Trans Mountain considers such amendments to be necessary, the Board expects them to be made in a manner and spirit consistent with the views, findings and directions set out in this Decision.

The Board directs Trans Mountain to file a revised Tariff and Officer's Certificate with the Board, for approval, by 27 February 2015. A black-line version, highlighting all amendments, must accompany each of these filings.

Board Interim Order TOI-002-2013 is amended to remain effective until such time as the Board approves Trans Mountain's revised Tariff and Officer's Certificate (see a copy of Board Order AO-001-TOI-002-2013 attached as Appendix V to this Decision).

Chapter 4

Historical-Based Verification Limits

This chapter considers the incorporation of nomination verification limits under Rule 6 of the Tariff, based on the Pipeline's historical deliveries to each facility connected to the Pipeline at a Land Destination (Historical Based Verification Limits or HBV Limits).[10] The Application set out the following four issues with respect to the manner in which the HBV Limits would be determined (HBV Limits Issues):

(i) whether to use a Rolling Alternative or a Fixed Alternative as the relevant historical period in setting the HBV Limits;

(ii) whether to use the Peak Alternative of the Average Alternative during the applicable Time Period;

(iii) the Time Period; and

(iv) whether to use the Dock Redirections Alternative or the No Dock Redirections Alternative in setting the HBV Limits.

This chapter first considers the appropriateness of using HBV Limits in the nomination verification procedures of the Pipeline, including the reasonableness of the current historical data. This is followed by an overview of the HBV Limits Issues, and consideration of the proposed minimum verification limit.

4.1 Appropriateness of Using Historical Deliveries to Verify Nominations

Views of Trans Mountain

Trans Mountain asserted that HBV Limits, when applied consistently, would result in more predictable outcomes for shippers, and would address any over-nominations and the current apportionment on the Pipeline.

In Trans Mountain's view, the proposed amendments to implement HBV Limits are appropriate because: (i) the verification procedures would be simple and easy to administer and therefore less judgment would be required; (ii) the use of deliveries is fair in that each destination would be treated consistently based on metered deliveries to the destination; (iii) the use of history clearly identifies whether a destination has demonstrated its capability to receive such delivery; and (iv) the proposed amendments would permit shippers to market to any of the destinations on an equal basis, whether they are new or existing shippers.

Trans Mountain submitted that, contrary to the assertions of Imperial Oil and Suncor, it does not intend to artificially limit the nomination to be submitted by a shipper. The intent of the HBV Limits is to enable Trans Mountain to verify nominations consistent with the verification limit to be established for the Land Destination identified in the nomination. In this regard, Trans Mountain was of the view that its proposal is not in violation of its common carrier obligation.

[10] See Appendix III – Trans Mountain's Proposed Tariff Amendments

Views of Export Shippers

Each of the Export Shippers supported the use of historical deliveries in establishing downstream verification limits for Land Destinations. Shell asserted that while the best and most effective method to alleviate apportionment on the Pipeline would be expansion of the system itself, in the interim the next best solution would be an apportionment procedure that establishes shipper-specific nomination verification limits based on actual historical deliveries.

In general, the Export Shippers argued that historical deliveries would be demonstrative of the capability of Land Destinations to remove nominated volumes from the Pipeline in accordance with Rule 6.1 of the current Tariff. Shell submitted that the purpose of the verification methodology is to increase the probability that the stated need of shippers (i.e., nominations) aligns with actual use, to create a fair and reasonable apportionment methodology. BP Canada acknowledged that historical deliveries to a delivery facility may be less than the facility's physical capacity, but contended that historical deliveries are an objective and accurate measure of the physical capability of a Land Destination to take delivery of at least this amount from the Pipeline.

The Export Shippers contended that the implementation of HBV Limits would mitigate the extent of apportionment on the Pipeline by ensuring that the total nominations to a particular Land Destination do not exceed the demonstrated capacity of that destination to take deliveries. It was suggested that HBV Limits would significantly reduce, if not almost eliminate, the current levels of apportionment on the Pipeline. These parties were of the view that this satisfies the Board's direction to Trans Mountain in the MH-002-2012 Reasons for Decision, and provides certainty to all shippers as to what portion of their nomination will be verified.

The Export Shippers also submitted that HBV Limits are simple to administer, fair and equitable, transparent, and do not require the application of judgment by Trans Mountain. According to Phillips 66, the use of HBV Limits is a formulaic approach that provides clear results with no need for interpretation.

In response to assertions that HBV Limits result in inappropriate "vintaging" because past volumes create a greater entitlement to current and future space on the pipeline, some Export Shippers submitted that the HBV Limits are targeted towards a stable group of shippers for a temporary period, and no new destinations or associated shippers are anticipated during that period. Within this context, HBV Limits are reasonable demonstrations of facilities' capabilities to receive volumes.

Views of Chevron

Chevron indicated that it would recommend HBV Limits only if its capacity-based verification proposal, discussed in section 3.2 of this Decision, were to prove impractical.

According to Chevron, all historical approaches suffer from the fact they are a snapshot. That is, they reflect what shippers were nominating in response to conditions at a point in time. However, Chevron submitted that if the Board should decide to employ HBV Limits, nominations should be based on actual shippers' behaviour when there were no constraints. This ensures that no one shipper would be permitted to avoid the current capacity constraints at the expense of other shippers by nominating volumes that, in the absence of the capacity constraint, it would not have been able to provide at the Receipt Point or at the Delivery Point. Chevron stated that it would

only accept the validity of historical nomination verification if it is based on data which "corrects" for this.

Views of Imperial Oil and Suncor

Imperial Oil and Suncor submitted that the proposal to establish HBV Limits is inappropriate because HBV Limits:

- artificially curtail valid nominations;
- do not properly measure the capability to remove petroleum at a delivery facility;
- are contrary to Trans Mountain's common carrier obligation and are discriminatory;
- conflate verification and apportionment; and
- result in "vintaging".

Imperial Oil and Suncor stated that the purpose of the nomination verification procedures is to validate a shipper's nomination by ensuring that the shipper can supply and take delivery of its nominated volume. It was their view that in proposing HBV Limits, Trans Mountain and its supporting shippers ignored the purpose of the verification procedures. They sought to establish verification limits not to validate shipper nominations, but rather to reduce the level of apportionment on the Pipeline.

According to Imperial Oil and Suncor, the historic deliveries to a delivery facility are not determinative of the capability of the facility to remove petroleum. In Imperial Oil and Suncor's view, the physical capacity of the facility is determinative of such capability. The Trans Mountain proposal, by capping the nomination volumes based on history as opposed to capacity, would preclude a shipper from nominating the full volume for which it had availability of supply and the capability to remove at the delivery facility. It would be contrary to Trans Mountain's common carrier obligation for it to refuse to accept nominations that constitute reasonable requests for service. Imperial Oil and Suncor contended that it would also conflate verification and apportionment, and it would discriminate against a shipper that had not utilized the full capacity of its delivery facility during the historic period.

With respect to "vintaging", Imperial Oil and Suncor explained that using past delivery volumes to create the entitlement to current and future space on the Pipeline would be contrary to the principle that shippers do not have acquired rights to capacity by virtue of past usage.

Views of the Board

The Board is of the view that the purpose of Trans Mountain's verification procedures is to increase the likelihood that each shipper's nominations align with its capability and intent to supply petroleum to, and remove petroleum from, the Pipeline.

The Board is not convinced that the Officer's Certificate and Tariff amendments described in Chapter 3, on their own, are adequate to align shippers' nominations with their capability and intent and address the apportionment issues on the Pipeline. The Board is interested in solutions that would strengthen the verification process to eliminate any "over-nominations."

The Board considers the use of HBV Limits to be appropriate for the verification procedures in this case. While the Board has generally not approved the long-term use of historical deliveries in capacity allocation procedures in the past, the Board finds that HBV Limits will better align each shipper's nominations with its capability and intent to transport petroleum on the Pipeline. In the Board's view, the evidence suggests that historical deliveries are reasonably demonstrative of the physical capabilities of Trans Mountain's shippers and their intended use of the Pipeline. The Board does not expect shippers' physical capabilities or intended use to change drastically from historic levels, at least in the short term. Moreover, HBV Limits can reasonably reflect changing market conditions and shipper needs, and can be easily administered.

The Board has sought to materially reduce apportionment levels on the Pipeline. Based on the submissions of Trans Mountain and intervening parties, the Board expects that the implementation of HBV Limits, along with the Officer's Certificate and Tariff amendments described in Chapter 3, will lead to materially reduced apportionment levels. The Board is of the view that this adequately addresses the Board's direction in the MH-002-2012 Reasons for Decision, and that shippers will benefit from an increase in their commercial and planning certainties.

In the Board's view, the Tariff provisions should be just, reasonable and not unjustly discriminatory, and all volumes should have an equal right to transportation capacity. The Board has carefully applied these principles in determining all of the issues discussed in this chapter. It has concluded that the implementation of HBV Limits will be fair and equitable for all shippers on the Pipeline.

HBV Limits are solely a means by which to prevent "over-nominations," and should be a reasonable proxy for each shipper's capability and intent to tender and remove its nominations. All shippers will be treated equitably under this approach. For this reason, the Board does not view HBV Limits as contravening the requirement under section 67 of the NEB Act which states that:

> 67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

Furthermore, the manner in which HBV Limits will be calculated allows shippers to increase their verification limits should they so choose and, consequently, their capacity over time. HBV Limits do not artificially cap the nominations of shippers. In the Board's view, the approach does not raise concerns regarding Trans Mountain's obligation under subsection 71(1) of the NEB Act, the statutory embodiment of the common law "common carriage" principle, which states that:

> 71.(1) Subject to such exemptions, conditions or regulations as the Board may prescribe, a company operating a pipeline for the transmission of oil shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.

To the extent that this Application requires an exemption under subsection 71(1) of the NEB Act, it is granted.

4.2 Appropriateness of Using Existing Historical Delivery Data for HBV Limits

Views of BP Canada

BP Canada asserted that the use of various verification processes in the past brings into question the consistency and validity of the Pipeline's historical data. For this reason, BP Canada proposed a "Fresh Start" approach, where all Land Shippers on the Pipeline would be provided an equal opportunity over an eight month period to establish a new delivery history that would then be used going forward. Following the initial eight month Fresh Start period, nominations would be verified according to the average historical delivery volume achieved during the highest six months out of a rolling eight month period.

BP Canada argued that shippers have inconsistently interpreted the Tariff in making nominations and taking deliveries on the Pipeline and, therefore, all shippers have not been following the same rules. BP Canada submitted that there exists a lack of clarity in the nomination and verification procedures, and raised concerns regarding some shippers' capability and intent to execute their nominations. According to BP Canada, all of this brings into doubt the fairness of relying on the historical delivery data that currently exists. A Fresh Start approach, on the other hand, would provide each shipper the same and equal opportunity to establish a new history of deliveries with the benefit of full notice and new Tariff provisions approved by the Board. BP Canada stated that it is only after clarity and certainty has been provided through Board approval and the express incorporation of the actual nomination requirements in both the Tariff and the Officer's Certificate that new historical delivery data can be used in any historical delivery nomination verification method on the Pipeline.

BP Canada suggested that the risk of inflated nominations during the Fresh Start period is likely to be mitigated by the clarifications and directions in respect of nomination and verification procedures on the Pipeline that would result from this proceeding, and by a scheduled Board review following any Tariff amendments flowing out of this proceeding.

Views of Chevron

Chevron opposed the Fresh Start proposal for two reasons. First, Chevron argued that the Fresh Start proposal would result in Pipeline allocations that are unjust, unreasonable, and discriminatory. Chevron asserted that the Fresh Start proposal is discriminatory because it ignores the capacity constraint of the Puget Sound Pipeline, and thereby allows nominations to the Sumas Delivery Point to obtain an unfair advantage over nominations to Burnaby or Kamloops. Further, Chevron argued that the Fresh Start proposal would essentially grant priority rights to shippers that can nominate the most, which is fundamentally at odds with Trans Mountain's common carrier obligation.

Second, the Fresh Start proposal would exacerbate apportionment and nomination problems on the Pipeline. Shippers would have an incentive to maximize their share of scarce Pipeline capacity during the Fresh Start period by nominating to their maximum allowed limit.

Views of Phillips 66

Phillips 66 suggested that apportionment would not be reduced immediately with BP Canada's Fresh Start proposal. Responding to BP Canada's suggestion that new delivery data is warranted by inconsistencies in interpreting the nomination requirements, Phillips 66 observed that by the time any HBV Limits are put into effect, it is likely that there would be at least 12 months of delivery data and nominations based on a common understanding of the key terms in the Officer's Certificate.

Views of Shell

Shell observed that Trans Mountain commenced discussions with its shippers in early 2013 and all of the shippers have had more than one year's notice of the proposed amendments to the Tariff. Shell stated that, given these circumstances, the proposed imposition of HBV Limits could not be considered a surprise, or justification for a "Fresh Start".

Shell submitted that BP Canada's proposal creates an incentive for shippers to maximize their shipments during the Fresh Start period, thereby creating artificial market conditions which would further exacerbate the apportionment problem by virtue of shippers overstating their actual need. Further, the overstatement of actual need would be carried-over into the newly established HBV Limit, resulting in a permanent and lasting negative impact on apportionment.

Views of Tesoro Canada

Tesoro Canada submitted that there are three problems with BP Canada's Fresh Start proposal. First, the Fresh Start approach would allow parties to establish new, higher levels of usage that are unconnected to their historical needs. According to Tesoro Canada, BP Canada has not demonstrated that a Fresh Start would result in more accurate nominations or that there would be less "gaming" than it alleges has been the case in the months leading up to this proceeding.

Second, Tesoro Canada asserted that there is no mechanism to accommodate long-term refinery shut downs due to major modifications or unexpected equipment damage. It was Tesoro Canada's view that while BP Canada suggested this is reasonable because the typical turnaround period lasts 30 days, it creates a serious risk for any refiner unlucky enough to have an atypical shutdown straddling multiple months, or an unplanned outage within six months of a scheduled turnaround.

Third, Tesoro Canada submitted that the six month Fresh Start period would reproduce and magnify the effect of seasonality in the nominations of the Refined Product Shippers, which are higher in the winter and late summer months.

Views of the Board

The Board has decided to reject BP Canada's "Fresh Start" proposal. In the Board's view, a "Fresh Start" approach would delay the correction of any "over-nominations" and any resulting reduction in apportionment levels. The Board agrees with Chevron that shippers may have an incentive to maximize their share of Pipeline capacity during the "Fresh Start" period by nominating to their maximum allowed limit. Therefore, a "Fresh Start" approach may allow shippers to establish a history of deliveries that is unconnected to

their historical needs. The Board has not been persuaded that an Officer's Certificate would sufficiently address this risk, or that shippers have interpreted the Tariff in a manner that would warrant a "Fresh Start" approach. The Board is of the view that the existing history of deliveries, which accounts for both allocations through Pipeline nominations and reallocations through secondary capacity markets, would be more reflective of a shipper's intent to transport petroleum on the Pipeline than would deliveries under a "Fresh Start" approach.

4.3 The Four HBV Limits Issues

Views of Trans Mountain

Trans Mountain presented general considerations regarding each of the HBV Limits Issues, but did not take a position on which of the alternatives should be adopted. Trans Mountain requested that the Tariff amendments approved by the Board in this proceeding remain in effect until: (i) the earliest of the date the Trans Mountain Expansion Project is placed in-service or four years from the effective date of amendments to the Tariff; or (ii) the Tariff is otherwise amended by the Board pursuant to an application by an interested party.

Trans Mountain submitted that the Rolling Alternative would reflect changes in HBV Limits as actual usage changes. The Fixed Alternative, on the other hand, would be less flexible in responding to changing Pipeline usage, and may confer fixed rights to historical shippers. Trans Mountain indicated, however, that the Fixed Alternative would be the most stable and predictable method for determining HBV Limits. Moreover, it would likely lead to an active and rigorous secondary market, which Trans Mountain viewed as a reflection of market efficiency.

According to Trans Mountain, the Peak and Average Alternatives would both be easy to administer. Whereas the Peak Alternative would reflect the maximum capability of a destination to receive volumes as demonstrated by historical usage, the Average Alternative would reflect normalized usage.

It was Trans Mountain's submission that a shorter Time Period has the risk of selecting a period where something unusual has occurred at a destination (e.g., a shutdown) or which incorporates recent shipper behaviour that was in anticipation of the amendments to the Tariff. A longer Time Period has the risk of not accurately reflecting more recent activity that may be more reflective of current shipper behaviour.

Trans Mountain submitted that including volumes redirected from the Westridge Dock in the determination of HBV Limits would reflect the value of crude oil to a destination. Dock redirections are the result of shippers seeking market efficiencies through the Pipeline's secondary capacity markets. Excluding these volumes from HBV Limits would be difficult for Trans Mountain to administer because: (i) the redirected volume is often not delivered as a distinct batch; (ii) transit times often result in the delivery of redirected volumes being distributed over two months; (iii) batches may be subsequently redirected to a second or third Land Destination; and (iv) accounting for such volume would require Trans Mountain to apply judgment in determining whether a portion of each delivery should be excluded from the delivered volume as a result of volumes being redirected from the Westridge Dock.

Trans Mountain observed that most shippers have proposed a variant of a "Rolling Average" (the combination of the Rolling Alternative and the Average Alternative).

Views of BP Canada

BP Canada supported the use of the Rolling Alternative and the Average Alternative in the determination of HBV Limits. According to BP Canada, the use of a Rolling Average would result in very low or almost negligible apportionment.

With respect to the Time Period, BP Canada proposed the use of the highest six out of the previous eight months, in the context of a "Fresh Start" approach. BP Canada suggested that the eight month Time Period properly balances the seasonality in the shipments of the Refined Product Shippers and incorporates the most current state of the market for transportation capacity. In addition, the use of the highest six of eight months accounts for refinery turnarounds, which are typically one month in length but can stretch to two months or more. Refineries can also mitigate the effect of turnarounds and shutdowns on Pipeline deliveries through the use of onsite storage.

It was BP Canada's view that Chevron's proposal regarding the Time Period (i.e., the "Corrective Approach", which calculates current HBV Limits based on historical deliveries from 2010) ignores one of the primary causes for the chronic levels of apportionment on the Pipeline. BP Canada asserted that the "Corrective Approach" ignores the stronger demand of Export Shippers for Pipeline capacity resulting from the price differential between mid-continent crude oil and waterborne crude oil.

BP Canada argued that Dock redirections should not be included in the determination of HBV Limits because Westridge Dock capacity is set aside on the Pipeline, and therefore these volumes do not contribute to apportionment.

BP Canada recommended that Trans Mountain be directed to file a report in the thirteenth month following any approved Tariff amendments taking effect. Such report would summarize: (i) any issues arising from the implementation of the Tariff amendments and Officer's Certificate approved in this proceeding; and (ii) the effects on apportionment. BP Canada suggested that all shippers on the Pipeline should have an opportunity to comment on the report and raise any issues with the Board.

Views of Chevron

Chevron submitted that if the Board is persuaded to consider HBV Limits, the most equitable result would be obtained by considering nominations and deliveries made at a time when shippers could expect to receive what they asked for and at a time when the Pipeline was not in apportionment. According to Chevron, the last such time was in 2010. Chevron was of the view that if historical use can be "corrected" to net out the distortions created by apportionment, a historical-based approach may be appropriate.[11]

Chevron's "Corrective Approach" uses a Rolling Average of historical delivery data that corrects for apportionment by calculating allocated volumes beginning in 2011 that reflect what volumes would have been if HBV Limits had been in effect at that time. The historical deliveries from January 2010 through December 2010 are used to calculate the verification limits for January 2011. The mechanism rolls forward each month until an actual verification limit is effective, at which point the "estimated corrected" deliveries would be replaced by actual deliveries. E3 contended that a simple Rolling Average, on the other hand, would perpetuate the historical results of apportionment.

[11] Chevron's position on the issues in this proceeding was premised on the Board accepting the use of "corrected" data.

Chevron supported the Rolling Alternative, observing that it would allow for verification limits to evolve over time in response to shippers' changing needs. Chevron also explained that in times of scarcity, it is most equitable and stable to allocate capacity in proportion to how the capacity has been used in the past, and average usage provides the most complete measurement of that past usage. According to Chevron, the use of the Peak Alternative would favour those shippers that use the system erratically and would penalize stable users. Chevron suggested that the seasonal variability of the Refined Product Shippers shipments is fully addressed by the exclusion of certain months in the relevant Time Period for a Rolling Average.

Chevron submitted that a reasonable Time Period that takes into account planned and unplanned events as well as seasonality would be based on the best 12 out of 18 months, with the exclusion of force majeure events. It was Chevron's view that the exclusion of a limited number of months from the rolling average is a fair and transparent way to account for issues that may affect a shipper's needs over a certain period of time. In responding to BP Canada's proposal, Chevron argued that a period of eight months is incapable of accounting for refinery maintenance, outage events, occasional redirect sales, or low volumes during off seasons.

Chevron submitted that Dock redirections represent the actual usage of the Pipeline in the past. Chevron argued that if historical usage is to be used as a proxy for capacity in setting a nomination verification limit, then redirections should be included in the purchasing shipper's volumes and removed from the selling shipper's volumes. According to Chevron, the inclusion of Dock redirections in HBV Limits can be a superior indication of a shipper's valuation of Pipeline capacity to the post-apportionment allocations, and would result in a more efficient allocation of scarce Pipeline capacity. To further support the functioning of the secondary redirect market, Chevron submitted that the current restrictions on redirection of barge volumes should be removed, and that barge and tanker volumes should be subject to the same rules.

Chevron suggested that the Board-approved Tariff amendments remain in place until such time that the Board determines that they are no longer just and reasonable.

Views of Imperial Oil and Suncor

Imperial Oil and Suncor opposed the use of HBV Limits. However, should HBV Limits be implemented, Imperial Oil and Suncor were of the view that the most appropriate limit would be the highest peak delivery that has ever been made to a facility because it would be the best historical measure of the facility's physical capacity. Nevertheless, Imperial Oil and Suncor indicated that even the peak historical deliveries would understate the actual physical capacities of the Kamloops and Burrard terminals. The Refined Product Shippers could still be precluded from nominating the full volume of petroleum for which they had the intent to tender and for which they had the capability to supply and remove from the Pipeline.

Imperial Oil and Suncor argued that the establishment of HBV Limits based on the Average Alternative would be particularly punitive for the Refined Product Shippers. They were of the view that using a historical average to limit their nominations would ignore the seasonal variability in their nominations, and would favour shippers with constant monthly volumes.

In addition, Imperial Oil and Suncor opposed the inclusion of redirected Dock volumes in any HBV Limits.

Views of Phillips 66

Phillips 66 supported a Rolling Average, expressed as a percentage of total deliveries to Land Destinations. It argued that the Peak Alternative would always result in higher apportionment than the Average Alternative, and that the Peak Alternative could be readily "gamed" when combined with the Dock Redirection Alternative and the Rolling Alternative. Phillips 66 explained that a shipper could nominate and ship more than it otherwise would to inflate a specific peak month's volume in order to increase subsequent capacity allocations in its favour.

PEG suggested that expressing the average deliveries determination as a percentage of total deliveries is preferable to the nominal historic volumes, as it is likely to be a more accurate indicator of a shipper's historic use and prior capacity allocation. For example, pressure restrictions can affect actual capacity available, and seasonality can affect volumes shipped.

With respect to the Time Period, Phillips 66 proposed the use of the highest 12 out of 15 months, excluding any force majeure events. Phillips 66 asserted that this timeframe is long enough to smooth out operational ups and downs in shipments, but short enough to reflect current needs and recent expectations. The three-month exclusion would allow shippers to conduct maintenance and/or make short-term changes to shipping patterns if necessary.

Phillips 66 recommended excluding Dock redirections in the calculation of HBV Limits. Phillips 66 explained that, currently, the redirection of Dock volumes to Land Destinations has no effect on the level of apportionment, but including these redirections in the determination of HBV Limits would arithmetically increase the level of apportionment. Furthermore, shippers would have an incentive to redirect volumes for the purpose of increasing their delivery history. This could distort the functioning of the Dock nomination process if the benefits of redirection and an increased share of apportioned capacity outweigh the cost of bidding up uncommitted Dock capacity or paying a premium to acquire firm Dock capacity.

In response to Trans Mountain's assertion that the No Dock Redirections Alternative would be difficult to administer, Phillips 66 indicated that the data Trans Mountain provided in this proceeding demonstrates that Trans Mountain has the ability to exclude redirected Dock volumes when it calculates capacity allocation. Phillips 66 also stated that, while Dock redirections should be excluded from the calculation of HBV Limits, there is no reason why volumes nominated to barges should not be permitted for redirection to Land Destinations.

Phillips 66 suggested that Trans Mountain should be directed to review the new verification procedures and the use of the Officer's Certificate after a period of six to nine months.

Views of Shell

Shell supported the Rolling and Average Alternatives, arguing that they provide the most accurate information about each shipper's actual need since the Fixed and Peak Alternatives do not take into account current market conditions. According to REG, the Peak Alternative also provides an incentive for inefficient action, in that shipping a large volume of petroleum for a short period can allow a shipper to gain an allocative advantage.

Shell submitted that a Time Period of the highest 12 out of the most recent 18 months finds an appropriate balance in reducing the impact of seasonality while factoring out unusual events, such as routine maintenance or outages. An 18-month period is long enough to minimize market

anomalies and reduce incentives for inefficient behavior, while still being short enough to account for changing market conditions. Shell argued that Chevron's "Corrective Approach" would result in the calculation of historical use based on shipments from 2010, effectively ignoring all market conditions and information from 2011 to present.

Shell was of the view that Dock redirections should be included in the calculation of HBV Limits since they provide information on the actual need of the Land Destinations winning the auction and the value that Land Destinations place on the Pipeline's capacity. Moreover, Shell stated that including Dock redirections allows the apportionment process to reflect changes in market conditions and allows shippers to react to temporary or unusual circumstances. Shell argued that including Dock redirections does not provide an incentive to "game" the apportionment process. It was Shell's view that bidding on Dock redirections is costly and, as such, parties are not obligated to submit a bid unless the bid provides value to them.

Views of Tesoro Canada

Tesoro Canada supported the Rolling and Average Alternatives because they adapt to changing market circumstances and let competitors compete in the marketplace. It was Tesoro Canada's view that the Fixed Alternative locks the shippers into their competitive position as of some point in the past, and thus inhibits the development of economically efficient or innovative shipper supply responses as market conditions evolve. Tesoro Canada submitted that the Peak Alternative would incentivize short term efforts to artificially increase historical deliveries above levels that would otherwise be economically justified, in pursuit of increased allocations.

Tesoro Canada proposed an initial Time Period of the highest 18 of 24 months. It recommended a Time Period that is an integer multiple of 12 months to address seasonality in the shipments of the Refined Product Shippers. If an 18-month Time Period were selected, the HBV Limits would become a function of the particular month in the year in which the period starts.

The proposal also recommended that a shipper's lowest six months of deliveries be dropped from the Time Period to reflect periodic turnarounds and unexpected events at shipper's refineries. Without a sufficient "grace period" shippers would attempt to maximize their deliveries on the Pipeline during turnarounds to preserve their nominations for the future. Shippers could be expected to make otherwise inefficient actions, such as deferring maintenance and re-purposing refinery intermediate product storage tanks to hold crude oil or storing crude oil in rail cars or tankers. Moreover, Tesoro Canada's view was that the interpretation of force majeure claims can often be contentious and that using a six-month "grace period" instead of a legal definition avoids the risk of the Board or Trans Mountain interpreting force majeure language to establish proper verification limits in future disputes.

Tesoro Canada argued that Chevron's "Corrective Approach" is flawed because it aims to set nominations based on a period of time unreflective of current market opportunities and incentives. It was Tesoro Canada's submission that market dynamics and shippers' supply strategies have changed since that time, and 2010 deliveries do not reflect the normal operating circumstances of Tesoro Canada and Phillips 66 due to a fire-related refinery shutdown and a corporate spin-off, respectively.

With respect to Dock redirections, Tesoro Canada submitted that these volumes should be excluded from the calculation of HBV Limits because the regulatory structure for the Westridge Dock was designed for a different market than Land Destinations. Tesoro Canada submitted that

the Board, in its RH-2-2011 Reasons for Decision, established a different and separate regulatory regime for service to the Westridge Dock to better enable Canadian producers to capture the benefits of export markets. According to Tesoro Canada, these objectives have nothing to do with the issues of determining verification limit procedures for Land Destination in this Application.

Tesoro Canada also submitted that including Dock redirections would incentivize "gaming" behaviour. If winning the Dock redirection became relevant to increasing a shipper's HBV Limit, then shippers could be expected to incur even higher premiums than they are now, and transport barrels at a loss. Tesoro Canada argued that this behaviour is economically inefficient.

Tesoro Canada supported Trans Mountain's request that the Tariff amendments resulting from this proceeding be in place until the earlier of four years or system expansion, subject to other amendments following applications by interested parties.

Views of the Board

Whether to use a Rolling Alternative or a Fixed Alternative

The Board has decided that a Rolling Alternative is appropriate to incorporate into the HBV Limits as it would account for changing market conditions and will likely contribute to significantly reducing apportionment. All Land Shippers, excluding the Refined Product Shippers, are supportive of the Rolling Alternative. The Board finds that the Rolling Alternative is dynamic by nature and would incorporate the most recent information regarding shippers' demand for space on the Pipeline. The Board views this as preferable to the Fixed Alternative, which could confer firm rights for some shippers and would require greater corrections for changing market conditions on a monthly basis in the secondary markets. The Board is of the view that utilization of the Rolling Alternative will provide for a fair initial allocation of Pipeline capacity at regulated rates.

The Board considers the calculation of the Rolling Average as a percentage of total deliveries to Land Destinations, as proposed by Phillips 66, to be appropriate. The Board is persuaded by Phillips 66's position that a calculation of the HBV Limits in percentage terms will better enable allocation of capacity in changing Pipeline circumstances, particularly in months following a reduction in available Pipeline capacity. The Board is of the view that using shippers' nominal deliveries may not be as flexible in adjusting to changing Pipeline circumstances.

Whether to use the Peak Alternative or the Average Alternative

The Board has decided that the Average Alternative is appropriate to incorporate into the HBV Limits. All Land Shippers, excluding the Refined Product Shippers, are supportive of the Average Alternative. The Board is persuaded by the positions of Trans Mountain, Chevron, and Shell that by representing normalized usage, average deliveries more closely reflect the actual need of shippers than do peak deliveries. The Board finds that, in any given month, HBV Limits based on average deliveries would better reflect shippers' intended use of the Pipeline. When used in combination with a Rolling Alternative, it will likely contribute to reducing apportionment to a greater extent than the Peak Alternative.

In the Board's view, while the use of peak deliveries would better account for the seasonality in refined products shipments, the effects of seasonality can be partially mitigated by selecting a Time Period that normalizes such effects (see discussion below). The Board considers that peak deliveries are likely more susceptible to "over-nominations", as just a single month of substantial deliveries would result in high HBV Limits for the duration of the Time Period.

The Time Period

The Board notes Tesoro Canada's position that a Time Period of a 12-month multiple would best account for shipment seasonality. However, the Board is of the view that, when combined with the Average Alternative and a six-month "grace period", a 12-month Time Period would harbour some of the shortcomings of the Peak Alternative as discussed above. The Board has decided instead that a Time Period that uses the highest 18 out of a 24-month Time Period is the most appropriate Time Period to incorporate into the HBV Limits.

The Board is persuaded by Tesoro Canada's submission that a six-month grace period would allow ample time for scheduled turnarounds such that refiners would not be incented to repurpose or expand storage facilities. The six-month grace period also addresses the proposals that force majeure events should be excluded from the calculation of HBV Limits.

With regard to the "Corrective Approach", the Board notes Chevron's submission that it would utilize nomination data for shippers during a period when "over-nominations" were not of concern, or in other words, when shippers could expect to receive what they nominated to the Pipeline. However, the Board finds that by doing so, it would not be reflective of market developments since 2010, including the effects of discounted Canadian crude oil. The Board is of the view that, in principle, increased demand for a discounted product is fair, and incorporating this market information into the HBV Limits is appropriate.

Whether to Use the Dock Redirections Alternative or the No Dock Redirections Alternative

The Board has decided that the Dock Redirections Alternative is appropriate in setting the HBV Limits. The Board is persuaded by the positions of Trans Mountain, Chevron, and Shell that including Dock redirections in historical deliveries is more representative of a shipper's capability to receive volumes from the Pipeline and the value that each shipper places on Pipeline capacity. The Board finds that by incorporating the market-based information from Dock redirections, the shippers that value the Pipeline capacity the most are able to increase their share of the capacity in a more expeditious manner.

The Board notes Trans Mountain's submission that excluding Dock redirections would be difficult to administer since accounting for such volumes would require Trans Mountain to apply judgment in determining whether a portion of each delivery should be excluded from the delivered volume as a result of Dock redirections.

The Board notes the submissions of Phillips 66 and Tesoro Canada regarding the potential impacts that including Dock redirections could have on overall apportionment levels and the demand and prices for Dock redirections. These parties argued that including Dock redirections would result in higher apportionment levels and that the potential exists for the Westridge Dock bid premium to reflect a greater value for Land Shippers while the HBV Limits are in use. Land Shippers may be able to increase their Pipeline deliveries, and therefore future HBV Limits, by purchasing and redirecting firm service Dock capacity. The Board is of the view that, while there may be higher apportionment levels and some potential for impact on Dock capacity utilization, including Dock redirections in the calculation of HBV Limits will aid in achieving a fair allocation on the Pipeline based on actual use and willingness-to-pay for Pipeline capacity.

Whether to Allow Barge Shipments to be Redirected from the Westridge Dock

The Board notes that no party to this proceeding has objected to the proposal by Phillips 66 that barge shipments be eligible to be redirected from the Westridge Dock, and that Chevron has supported the proposed Tariff revision. However, not all shippers to the Westridge Dock were active participants in this proceeding. The Board is of the view that it would be inappropriate to make a determination on Phillips 66's request without considering the views of all potentially affected parties.

Whether to Mandate a Review or provide a Termination Date for the HBV Limits

The Board has decided against mandating a review of the implementation of the Tariff amendments and providing for a termination date. If unintended impacts arise or if market circumstances materially change, the Board expects Trans Mountain and its shippers to negotiate solutions between themselves. Should the parties fail to reach an agreement, they may bring any concerns forward to the Board for resolution.

4.4 Minimum Verification Limit

Views of Trans Mountain

In establishing verification limits based on historical deliveries, Trans Mountain submitted that a minimum verification limit is required and should be available under the terms of the Tariff to ensure that: (i) capacity remains available for any new Land Destination that would not have a history of deliveries; (ii) the Tariff provides flexibility to respond to access requirements for a new Land Destination; and (iii) all Land Destinations, regardless of their delivered history, could continue to access the Pipeline. Trans Mountain was not aware of any proposals to construct new facilities that would result in a new Land Destination.

Trans Mountain proposed that the verification limit for a Land Destination be the greater of:

(a) the maximum or average volume delivered to that Land Destination (i.e., the HBV Limit); or
(b) three per cent of available capacity.

Therefore, three per cent of available capacity would represent the minimum verification limit for a Land Shipper on the Pipeline. Trans Mountain submitted that available capacity refers to the approximately 221,000 bpd of Pipeline capacity reserved for deliveries to Land Destinations.

Trans Mountain explained that all verification limits would be subject to apportionment under Rule 14 of the Tariff. In this regard, Trans Mountain proposed that a minimum verification limit should provide a Land Destination with a reasonable allocation both before and after applying apportionment.[12]

Trans Mountain considered that a three per cent minimum verification limit was a fair compromise for both new and existing users.

Views of Shippers

BP Canada and Tesoro Canada both supported Trans Mountain's proposed minimum verification limit, and Phillips 66 considered the proposal to be reasonable. BP Canada stated that the proposal would permit any new Land Destination to build its historical verification limit.

Chevron agreed with a minimum verification limit of three per cent of available capacity insofar as it applied to shippers (existing or new) on the Pipeline, rather than Land Destinations.

Imperial Oil and Suncor provided no views on the proposed minimum verification limit. They argued that if historical-based verification limits are rejected by the Board, the establishment of minimum verification limits becomes unnecessary.

Shell took a neutral position on this issue.

Views of the Board

The Board has decided that Trans Mountain's proposal is reasonable. The three per cent minimum verification limit appropriately balances the interests of shippers with and without an established history of deliveries. The Board notes that several parties supported the proposal, and no parties were expressly opposed to the concept of it.

The Board has heard that no new Land Shippers are expected on the Pipeline, and the Board expects that existing shippers are unlikely to use the minimum verification limit in the absence of a significant change in operations. However, in the Board's view, a minimum verification limit is a sensible component of any historical-based verification methodology to be incorporated into the Tariff. A minimum verification limit ensures that all shippers, regardless of their history of deliveries, have a fair opportunity to access capacity on the Pipeline. In this sense, minimum verification limits are relevant to Trans Mountain fulfilling its common carrier obligations.

The Board acknowledges the risk that, under very high apportionment levels, shippers nominating at the minimum verification limit may not meet minimum batch size requirements. However, the Board expects that the implementation of HBV Limits will

[12] Trans Mountain provided an example: three per cent of available capacity is equal to approximately 6,600 bpd or approximately 200,000 barrels per month. Assuming apportionment levels of 75 per cent, a destination would then receive approximately 50,000 barrels in a month, which is equivalent to the minimum batch size (the minimum allocation). If apportionment were 25 per cent, a destination utilizing the minimum verification limit would receive three batches per month on the Pipeline, or approximately 150,000 barrels.

reduce apportionment levels on the Pipeline. In light of this, the risk of shippers failing to meet the Pipeline's minimum batch size requirements is considered low, barring a sudden and significant reduction in available capacity.

The Board approves the wording proposed by Trans Mountain to establish the minimum verification limit.

Appendix I

RHW-001-2013 – Detailed Procedural History

On 15 October 2013, Trans Mountain filed the Application with the Board. In the Application, Trans Mountain requested, among other things, an interim order or direction from the Board requiring that any shipper that is unable to provide third party verification from a non-Affiliate must provide an Officer's Certificate in the form set out in Attachment 3 to the Application. Such Officer's Certificate would be required to satisfy the verification requirements in the Tariff.

By letter dated 30 October 2013, the Board solicited the views of shippers and interested persons on the request for the interim order. After considering the submissions received, the Board found the request to be reasonable and issued Interim Order TOI-002-2013 on 27 November 2013, approving the request as filed.

On 11 December 2013, the Board issued Hearing Order RHW-001-2013, including the procedural schedule for the hearing (Timetable of Events) and a Draft List of Issues. The Board asked shippers and interested persons to comment on the Draft List of Issues by 20 December 2013. After considering the submissions received, the Board issued a Final List of Issues and the List of Parties on 10 January 2014.

The Timetable of Events established that Trans Mountain was to respond to information requests (IRs) from the parties (Intervenors) by 14 February 2014. On 7 February 2014, the Board received a Notice of Motion from Chevron, pursuant to section 16.1 of the NEB Act, seeking confidential treatment of certain information that it anticipated Trans Mountain would file in response to Intervenor IRs (Chevron's Motion). By letter dated 13 February 2014, the Board sought comments from the parties on Chevron's Motion. The Board also suspended the procedural schedule in the Timetable of Events, pending the resolution of Chevron's Motion.

On 10 March 2014, the Board issued Ruling No. 1 and Order PO-001-RHW-001-2013, granting section 16.1 protection for the responses to certain IRs. The Board found that some of the IRs identified in Chevron's Motion did not seek confidential information. Accordingly, the Board directed Trans Mountain to file responses to these IRs publicly. In addition, the Board directed Trans Mountain to file the responses to certain other IRs by 17 March 2014 before finalizing its determination of Chevron's Motion. The Board accepted Trans Mountain's proposal to use a web-based confidential site to allow parties to access confidential information (Confidential Website) and to have Trans Mountain's counsel serve as administrator of the site.

On 1 April 2014, the Board issued Ruling No. 2 and Order AO-001-PO-001-RHW-001-2013. Ruling No. 2 directed that the responses to certain IRs that Trans Mountain filed in accordance with Ruling No. 1 would be treated confidentially, whereas others would not. The Board also issued Order PO-002-RHW-001-2013 which provided a definition of Confidential Information for the proceeding and established the measures to be taken to ensure the protection of such Confidential Information. The Board attached a Revised Timetable of Events.

On 15 April 2014, the Board received a request from Trans Mountain, pursuant to Clause 4 of Order PO-002-RHW-001-2013, to authorize certain internal Trans Mountain personnel to access the Confidential Information uploaded to the Confidential Website. Trans Mountain submitted that such access was required in order to facilitate Trans Mountain's participation in the

proceeding. In Ruling No. 3, dated 28 April 2014, the Board authorized Trans Mountain's internal personnel to access the Confidential Information uploaded to the Confidential Website, on the terms and conditions of Order PO-002-RHW-001-2013.

The Revised Timetable of Events established that Intervenors were to respond to IRs from other Intervenors by 26 May 2014. From 20 May to 27 May 2014, the Board received Notices of Motion from Imperial Oil and Suncor, Chevron, BP Canada, Phillips 66 and Tesoro Canada seeking orders, pursuant to section 16.1 of the NEB Act, allowing them to file in confidence the responses to certain IRs (Intervenor Motions). By letter dated 30 May 2014, the Board suspended the procedural schedule in the Revised Timetable of Events, pending the resolution of the Intervenor Motions.

On 9 June 2014, the Board issued Ruling No. 4 and Order PO-003-RHW-001-2013 granting section 16.1 protection for the responses to certain IRs and denying the relief in regard to others. The Board also granted additional relief requested by BP Canada, Phillips 66 and Tesoro Canada regarding the provision of certain Confidential Information to internal company personnel and the application of certain clauses of Order PO-002-RHW-001-2013 to a company's own Confidential Information. The Board established a timetable for filing further motions regarding the confidentiality of IR responses and to compel full and adequate responses. The Board advised parties that once the steps outlined in the timetable were completed, the Board would decide on a revised Timetable of Events for the remainder of the proceeding.

On 17 June 2014, the Board received Notices of Motion from Phillips 66 and Tesoro Canada seeking orders, pursuant to section 16.1 of the NEB Act, allowing them to file responses to certain IRs in confidence (Phillips 66 & Tesoro Canada Motions). The Board did not receive any motions to compel full and adequate responses.

On 27 June 2014, the Board issued Ruling No. 5 and Order AO-001-PO-003-RHW-001-2013, granting the relief sought in the Phillips 66 & Tesoro Canada Motions.

On 17 July 2014, the Board issued a Revised Timetable of Events for the remainder of the proceeding and directed parties to submit written final argument that focused on the matters outlined in the Final List of Issues.

On 18 July 2014, the Board issued IR Round 3 to Trans Mountain. On 25 July 2014, Trans Mountain filed a motion requesting that its response to Board IR 3.2(c)(v) be treated on a confidential basis. On the same date, Tesoro Canada filed a letter requesting that the procedural schedule be adjusted so that parties would be able to view Trans Mountain's public responses to the Board's IRs before filing their corporate Reply Evidence.

In Ruling No. 6, dated 28 July 2014, the Board granted Trans Mountain's request and issued Order AO-002-PO-001-RHW-001-2013. The Board also issued a revised Timetable of Events extending the procedural schedule by one week.

Hearing Participation

The following parties were granted Intervenor status in the hearing:

- Alberta Department of Energy
- BP Canada Energy Group ULC
- Canadian Association of Petroleum Producers
- Cenovus Energy Inc.
- Chevron Canada Limited
- Devon Canada Corp.
- Husky Oil Operations Limited
- Imperial Oil Limited
- Nexen Marketing
- Phillips 66 Canada Ltd.
- Shell Trading Canada/Shell Canada Limited
- Suncor Energy Products Partnership
- Tesoro Canada Supply & Distribution Ltd.
- UNIFOR

Appendix II

List of Issues

The Board has identified but does not limit itself to the following issues for discussion in the proceeding:

1) The appropriateness of Tariff revisions regarding nomination verification procedures in Rule 6.1 of the Tariff, including the proposed Rules 1.4, 6.1, 6.2 and 6.4.

2) The appropriateness of Tariff revisions to incorporate verification limits regarding:

    a. The use of a fixed number of months immediately preceding a monthly nomination date (the Rolling Alternative) versus a set historical period that will not change (the Fixed Alternative);

    b. The use of the maximum volume delivered in any month during the applicable historical time period (the Peak Alternative) versus the average monthly volume delivered to a facility connected to a Land Destination during the applicable historical time period (the Average Alternative);

    c. The applicable historical time period (the Time Period);

    d. The inclusion of volumes redirected from the Westridge Marine Terminal to Land Destinations under Rule 14.7 of the Tariff (the Dock Redirections Alternative) versus the exclusion of these volumes (the No Dock Redirections Alternative); and

    e. Adjustments to the calculation of historical deliveries for the purpose of determining verification limits.

3) The appropriateness of establishing a minimum verification limit for a Land Destination based on three per cent of available capacity on the Trans Mountain pipeline system.

4) The appropriateness of alternative nomination verification or capacity allocation and apportionment procedures proposed by intervenors to address the current apportionment on the Trans Mountain pipeline system.

5) The terms and conditions, if any, that should be included in any approval the Board may issue.

Appendix III

Trans Mountain's Proposed Tariff Amendments

In its Application, Trans Mountain proposed several amendments to the Tariff.

The existing nomination verification procedures are set out in Rule 6.1 of the Tariff. Trans Mountain proposed to amend Rule 6.1 by dividing it into three separate rules, namely amended Rule 6.1, Rule 6.2 and Rule 6.4.

Trans Mountain submitted that amended Rule 6.1 would continue to address monthly nominations, and would consist solely of the first sentence of the existing Rule 6.1:

> 6.1 **Monthly Nominations.** On or before the Monthly Nomination Date, the Shipper shall provide the Carrier with a Nomination on the Notice of Shipment indicating the volume of Petroleum to be transported for the following Month, the Receipt Point, the Delivery Point, the type(s) of Petroleum, and for Uncommitted Shipper Nominations to the Westridge Marine Terminal, the Bid Price.

Amended Rule 6.2 would set out the nomination verification procedures on the Pipeline as follows:

> 6.2 **Nomination Verification.** The Shipper shall, upon notice from the Carrier, provide written verification of the availability of its supply of Petroleum to satisfy the Nominated volume and of its capability to remove such Petroleum from the Delivery Point(s) as may be required by the Carrier in support of such Shipper's Nomination. The verification shall be provided by a third party that is not an Affiliate of the Shipper. However, where verification cannot be provided by a non-Affiliate, verification may be provided by the operator of the upstream facility from which the Shipper's Petroleum will be received at the Receipt Point, or the operator of a Land Destination, as applicable, and such verification shall be in the Carrier's prescribed form of officer's certificate, as may be amended by Carrier from time to time. The Carrier shall not be obligated to accept the Shipper's Nomination where such verification is unacceptable to the Carrier acting reasonably.

In amended Rule 6.2, Trans Mountain proposed the use of the term "Affiliate". The use of this term would clarify that, for the purposes of providing a verification under Rule 6, an Affiliate would not be considered a third party. Where verification could not be provided by a third party non-Affiliate of the shipper, verification would be required in the form of an Officer's Certificate.

Trans Mountain proposed that the following definition for the term "Affiliate" be added to the Tariff as a new Rule 1.4:

1.4 **"Affiliate"** means, with respect to a Shipper:

(a) an "affiliate" as defined in the Canada Business Corporations Act, R.S.C. 1985, c. C-44, as may be amended or replaced from time to time;

(b) a unit or division or any corporation referred to in Rule 1.4(a);

(c) a Person in which the Shipper or any corporation referred to in Rule 1.4(a) has a controlling interest;

(d) a Person that is the operator of the upstream facility from which the Shipper's Petroleum will be received at the Receipt Point, or that is the operator of a Land Destination, that is subject to the control of the Shipper or any corporation referred to in Rule 1.4(a) pursuant to a commercial or operational arrangement with the Shipper or any corporation referred to in Rule 1.4(a); or

(e) an agent or other Person acting on behalf of any Person referred to in Rules 1.4(a) to (d).

Amended Rule 6.4 would be comprised of the last two sentences of the existing Rule 6.1, which would remain unchanged:

6.4 **Apportioned Nominations.** When the Shippers' Nominations have been apportioned pursuant to Rule 14, the Shipper shall be deemed to have submitted a Nomination equal to the Nomination specified in the Notice of Shipment reduced by the level of apportionment (the Allocated Volume). Except as expressly provided in a Contract, if a Shipper fails to Nominate any volume, the Shipper's monthly Nomination will be deemed to be zero.

In addition to these proposals, Trans Mountain proposed to revise the Tariff to incorporate verification limits into an amended Rule 6.3. The verification limits would represent the maximum volumes that would be verified for a particular refinery or terminal connected at a Land Destination, and would be based on historical deliveries to these facilities. Trans Mountain did not propose specific wording for the amended Rule 6.3, as Trans Mountain did not take a position on the details of the proposed historical-based verification limits.

Trans Mountain proposed revisions to clarify the intent of the Tariff. In this regard, the Application set out a new definition for "Land Destinations" under Rule 1.41 of the existing Tariff as follows:

1.41 **"Land Destinations"** means refineries or terminals that receive Petroleum transported by the Carrier and are connected at Burnaby, British Columbia, Kamloops, British Columbia and Export Destinations.

In response to questions from the Board, Trans Mountain also proposed to add a definition for "Sumas, British Columbia" and amend the term "Deliver" in the Tariff, in order to clarify and ensure a common understanding that Trans Mountain cannot physically deliver petroleum to shippers at the Sumas Delivery Point.

"Sumas, British Columbia" means the point near the International Boundary south of Sumas, British Columbia where the custody of Petroleum is transferred from Trans Mountain Pipeline ULC to Trans Mountain Pipeline (Puget Sound) LLC.

"Deliver" and any derivative thereof, means delivered by the Carrier to the Shipper or to Trans Mountain Pipeline (Puget Sound) LLC at the Delivery Point.

Finally, Trans Mountain proposed a number of changes to other Tariff rules in order to adapt them to reflect the amendments described above.

Appendix IV

Trans Mountain's Proposed Officer's Certificate

For the Nomination Month of: _____

To: Coordinators, Customer Logistics
Trans Mountain Pipe Line ULC

RE: Officer's Certificate ("Certificate")

I, _____ (name) am the _____, of _____("Shipper"). On behalf of Shipper and not in a personal capacity, I certify and warrant that:

1. The capitalized terms used in this Certificate have the meaning provided to them in the Trans Mountain Pipeline ULC Petroleum Tariff No. 92 – Rules and Regulations Governing the Transportation of Petroleum (effective July 16, 2013).

2. I am an officer of Shipper and have authority to give this Certificate. I have informed myself as necessary in order to give this Certificate.

3. As of the Monthly Nomination Date,

    a. Shipper has the capability and intent to Tender its Nominated Volumes and Petroleum type(s) provided that such Nomination is accepted by Carrier.

    b. Shipper confirms that the delivery facility indicated on Shipper's Nomination for the Nomination Month has the capability and intent to remove, or have removed, the Nominated Volume and Petroleum type(s).

4. As of the Monthly Nomination Date, Shipper has supply available to it sufficient to satisfy its Nominated Volumes and Petroleum type(s) for Tender at the indicated Receipt Points during the Nomination Month. Shipper's supply means:

    a. the sum of:

        i. volumes Shipper intends to produce, and reasonably believes will be produced, from its production facilities in sufficient time for them to be Tendered in the Nomination Month

ii. volumes Shipper has purchased from another party, and that the Shipper reasonably believes are available in the market for it to purchase, and are capable of being Tendered in the Nomination Month

iii. volumes Shipper has in storage at a facility that are capable of being Tendered in the Nomination Month

b. less any volumes that:

i. have been nominated for delivery to an alternative pipeline/facility in the same Nomination Month

ii. have been sold or otherwise committed to another party in the same Nomination Month

iii. have been sold or otherwise committed to serve a market not served by Delivery from the Trans Mountain Mainline System.

Executed this ___ day of _____, _____.

_____

Name:

Title:

Company:

Appendix V

Board Order AO-001-TOI-002-2013

ORDER AO-001-TOI-002-2013

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the regulations made thereunder; and

IN THE MATTER OF an application dated 15 October 2013, filed with the National Energy Board (Board) by Trans Mountain Pipeline ULC (Trans Mountain) pursuant to Part IV of the NEB Act for approval of Tariff[13] amendments regarding verification procedures (the Application) under File OF-Tolls-Group 1-T260-2013-06 01.

BEFORE the Board on 8 December 2014.

WHEREAS Trans Mountain filed the Application for approval of Tariff revisions regarding the nomination verification procedures in Rule 6.1 of the Tariff, and approving Tariff revisions to incorporate verification limits, to address apportionment on the Trans Mountain pipeline system;

AND WHEREAS in the interim, Trans Mountain requested the Board to direct that any shipper unable to provide third party verification from a non-affiliate provide an officer's certificate in the form set out in Attachment 3 to the Application in order to satisfy the verification requirements in the Tariff (the Proposed Interim Order);

AND WHEREAS the Board received comments from shippers, interested persons and from Trans Mountain regarding the Proposed Interim Order;

AND WHEREAS on 26 November 2013 the Board approved the Proposed Interim Order as filed and issued Interim Order TOI-002-2013 (Interim Order);

AND WHEREAS the Board ordered that the Interim Order shall remain in effect until the Board releases its decision on the Application;

AND WHEREAS the Board's decisions in respect of the Application are set out in the National Energy Board RHW-001-2013, Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P., Reasons for Decision, dated January 2015 (the Decision);

[13] Tariff refers to Trans Mountain Pipeline ULC Petroleum Tariff No. 92 – Rules & Regulations Governing the Transportation of Petroleum (effective 16 July 2013).

AND WHEREAS in the Decision, the Board directed Trans Mountain to file a revised Tariff and Officer's Certificate with the Board, for approval, by 27 February 2015;

IT IS ORDERED, pursuant to subsection 19(2) and Part IV of the NEB Act, that:

Paragraph 2 of the Interim Order is revised to read:

2. This Interim Order shall remain in effect until the Board approves Trans Mountain's revised Tariff and Officer's Certificate, in accordance with the Decision.

NATIONAL ENERGY BOARD

Sheri Young
Secretary of the Board